Section I

Part II -- Contract Clauses

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I.1 FAR 52.252-1 Solicitation Provisions Incorporated by Reference (Feb 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at one of these addresses:
http://www.arnet.gov/far/; or
http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation?OpenDocument

a. Federal Acquisition Regulation (48 CFR Chapter 1) Clauses

Number	Date	Title
52.203-3	Apr 1984	Gratuities
52.203-5	Apr 1984	Covenant Against Contingent Fees
52.203-6	Jul 1995	Restrictions on Subcontractor Sales to the Government
52.203-7	Jul 1995	Anti-Kickback Procedures
52.203-8	Jan 1997	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
52.203-10	Jan 1997	Price or Fee Adjustment for Illegal or Improper Activity
52.203-12	Jun 1997	Limitation on Payments to Influence Certain Federal Transactions
52.204-4	Aug 2000	Printed or Copied Double-Sided on Recycled Paper
52.207-5	Feb 1995	Option to Purchase Equipment
52.209-6	Jul 1995	Protecting the Government's Interest When Subcontracting with Contactors Debarred, Suspended, or Proposed for Debarrment
52.215-2	Jun 1999	Audit and Records -- Negotiation
52.215-8	Oct 1997	Order of Precedence -- Uniform Contract Format
52.215-10	Oct 1997	Price Reduction for Defective Cost or Pricing Data
52.215-11	Oct 1997	Price Reduction for Defective Cost or Pricing Data -- Modifications
52.215-12	Oct 1997	Subcontractor Cost or Pricing Data
52.215-13	Oct 1997	Subcontractor Cost or Pricing Data -- Modifications
52.215-15	Dec 1998	Pension Adjustments and Asset Reversions
52.215-17	Oct 1997	Waiver of Facilities Capital Cost of Money [Note: *Applicable if the Contractor did not include facilities capital cost of money as a proposed cost of this contract.*]
52.215-18	Oct 1997	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.215-21	Oct 1997	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data -- Modifications
52.219-8	Oct 2000	Utilization of Small Business Concerns
52.219-9	Jan 2002	Small Business Subcontracting Plan; Alternate II (Oct 2001)
52.219-16	Jan 1999	Liquidated Damages -- Subcontracting Plan

Number	Date	Title
52.219-25	Oct 1999	Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting
52.222-1	Feb 1997	Notice to the Government of Labor Disputes
52.222-2	Jul 1990	Payment for Overtime Premiums
52.222-3	Aug 1996	Convict Labor
52.222-4	Sep 2000	Contract Work Hours and Safety Standards Act -- Overtime Compensation
52.222-21	Feb 1999	Prohibition of Segregated Facilities
52.222-26	Apr 2002	Equal Opportunity
52.222-35	Dec 2001	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.222-36	Jun 1998	Affirmative Action for Workers with Disabilities
52.222-37	Dec 2001	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.222-41	May 1989	Service Contract Act of 1965, As Amended
52.223-3	Jan 1997	Hazardous Material Identification and Material Safety Data (Alternate I, July 1995)
52.223-5	Apr 1998	Pollution Prevention and Right-to-Know Information
52.223-6	May 2001	Drug-Free Workplace
52.223-10	Aug 2000	Waste Reduction Program
52.223-12	May 1995	Refrigeration Equipment and Air Conditioners
52.223-14	Oct 2000	Toxic Chemical Release Reporting
52.224-1	Apr 1984	Privacy Act Notification
52.224-2	Apr 1984	Privacy Act
52.225-1	May 2002	Buy American Act -- Supplies
52.225-13	Jul 2000	Restrictions on Certain Foreign Purchases
52.227-3	Apr 1984	Patent Indemnity
52.227-11	Jun 1997	Patent Rights -- Retention by the Contractor (Short Form) [Note: *applicable if the Contractor is a small-business or a non-profit entity*]
52.227-12	Jan 1997	Patent Rights -- Retention by the Contractor (Long Form) [Note: *applicable if the Contractor is NOT a small-business or non-profit entity*]
52.227-13	Jan 1997	Patent Rights -- Acquisition by the Government
52.227-14	Jun 1987	Rights in Data -- General (Alternate II, June 1987; Alternate III, June 1987)
52.227-16	Jun 1987	Additional Data Requirements
52.228-7	Mar 1996	Insurance -- Liability to Third Persons
52.230-2	Apr 1998	Cost Accounting Standards
52.230-3	Apr 1998	Disclosure and Consistency of Cost Accounting Practices [*Note: applicable if Contractor certifies it is eligible for and elects to use modified CAS coverage*]
52.230-5	Apr 1998	Cost Accounting Standards -- Educational Institution [Note: *applicable if Contractor is an educational institution*]
52.230-6	Nov 1999	Administration of Cost Accounting Standards
52.232-9	Apr 1984	Limitation on Withholding of Payments

Number	Date	Title
52.232-17	Jun 1996	Interest
52.232-18	Apr 1984	Availability of Funds
52.232-20	Apr 1984	Limitation of Cost
52.232-22	Apr 1984	Limitation of Funds
52.232-23	Jan 1986	Assignment of Claims
52.232-25	Feb 2002	Prompt Payment (Alternate I, February 2002)
52.232-33	May 1999	Payment by Electronic Funds Transfer -- Central Contractor Registration
52.233-1	Jul 2002	Disputes (Alternate I, December 1991)
52.233-3	Aug 1996	Protest after Award (Alternate I, June 1985)
52.237-2	Apr 1984	Protection of Government Buildings, Equipment, and Vegetation
52.237-3	Jan 1991	Continuity of Services
52.237-7	Jan 1997	Indemnification and Medical Liability Insurance
52.239-1	Aug 1996	Privacy or Security Safeguards
52.242-1	Apr 1984	Notice of Intent to Disallow Costs
52.242-3	May 2001	Penalties for Unallowable Costs
52.242-4	Jan 1997	Certification of Final Indirect Costs
52.242-10	Apr 1984	F.O.B Origin -- Government Bills of Lading or Prepaid Postage
52.242-13	Jul 1995	Bankruptcy
52.242-15	Aug 1989	Stop-Work Order (Alternate I, April 1984)
52.243-2	Aug 1987	Changes -- Cost Reimbursement (Alternate II, April 1984)
52.244-2	Aug 1998	Subcontracts (Alternate II, August 1998)
52.244-5	Dec 1996	Competition in Subcontracting
52.245-1	Apr 1984	Property Records
52.245-19	Apr 1984	Government Property Furnished "As Is"
52.246-25	Feb 1997	Limitation of Liability -- Services
52.247-1	Apr 1984	Commercial Bill of Lading Notations
52.247-63	Jan 1997	Preference for U.S.-Flag Air Carriers
52.248-1	Feb 2000	Value Engineering
52.249-6	Sep 1996	Termination (Cost Reimbursement)
52.249-14	Apr 1984	Excusable Delays
52.251-1	Apr 1984	Government Supply Sources
52.251-2	Jan 1991	Interagency Fleet Management System Vehicles and Related Services
52.253-1	Jan 1991	Computer Generated Forms

b. Department of Energy Acquisition Regulation (48 CFR Chapter 9) clauses:

Number	Date	Title
952.203-70	Dec 2000	Whistleblower Protection for Contractor Employees
952.204-2	May 2002	Security
952.204-70	Sep 1997	Classification/Declassification
952.204-71	Apr 1994	Sensitive Foreign Nations Controls
952.204-75	Dec 2000	Public Affairs
952.208-70	Apr 1984	Printing
952.217-70	Apr 1984	Acquisition of Real Property
952.223-72	Apr 1984	Nuclear Protection and Nuclear Criticality

Number	Date	Title
952.223-75	Apr 1984	Preservation of Individual Occupational Radiation Exposure Records
952.224-70	Apr 1994	Paperwork Reduction Act
952.226-74	Jun 1997	Displaced Employee Hiring Preference
952.227-9	Feb 1995	Refund of Royalties
952.242-70	Dec 2000	Technical Direction
952.247-70	Dec 2000	Foreign Travel
952.251-70	Dec 2000	Contractor Employee Travel Discounts
970.5204-2	Dec 2000	Laws, Regulations, and DOE Directives
970.5215-3	Dec 2000	Conditional Payment of Fee, Profit, or Incentives (Alternate I)
970.5226-2	Dec 2000	Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993
970.5232-1	Dec 2000	Reduction or Suspension of Advance, Partial, or Progress Payments
970.5232-3	Dec 2000	Accounts, Records, and Inspection
970.5232-5	Dec 2000	Liability with Respect to Cost Accounting Standards
970.5232-6	Dec 2000	Work For Others Funding Authorization

I.2 FAR 52.215-19 Notification of Ownership Changes (Oct 1997)

a. The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

2. The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

b. The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;

2. Provide the ACO or designated representative ready access to the records upon request;

3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

c. The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

I.3 FAR 52.217-8 Option to Extend Services (Nov 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 180 to 30 days prior to the expiration date of the contract.

I.4 FAR 52.217-9 Option to Extend the Term of the Contract (Mar 2000)

a. The Government may extend the term of this contract by written notice to the Contractor within the period of performance stated within this Contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the contract expires. The preliminary notice does not commit the Government to an extension.

b. If the Government exercises this option, the extended contract shall be considered to include this option clause.

c. The total duration of this contract, including the exercise of any options under this clause, shall not exceed ten (10) years.

I.5 FAR 52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only:
It is not a Wage Determination

Employee Class*	Monetary Wage**	Fringe Benefits
Nurse, GS-09, ($38,588)	$18.49	$4.45
Laboratory Technician, GS-07, ($31,546)	$15.12	$3.64
Records Clerk, GS-05, ($25,467)	$12.20	$2.93

*All grades are step 1. The fringe adder is 24.05%.
** Wage rate is salary/2087.

I.6 FAR 52.223-7 Notice of Radioactive Materials (January 1997)

a. The Contractor shall notify the Contracting Officer or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice

shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

b. If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall:

1. Be submitted in writing;

2. State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

3. Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

c. All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD-129 in effect on the date of the contract.

d. This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

I.7 <u>FAR 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products</u> (Alternate I, Aug 2000)

a. *Definitions.* As used in this clause:

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material".

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

b. The Contractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(i)(2)(C)):

CERTIFICATION

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

_____
[Signature of the Officer or Employee]

_____
[Typed Name of the Officer or Employee]

_____
[Title]

_____
[Name of Company, Firm, or Organization]

_____
[Date]

c. The Contractor, on completion of this contract, shall:

1. Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of post-consumer material content; and

2. Submit this estimate to the Contracting Officer.

I.8 52.244-6 Subcontracts for Commercial Items (May 2002)

a. *Definitions.* As used in this clause-

"Commercial item" has the meaning contained in the clause at 52.202-1, Definitions. "Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

b. To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

c. 1. The Contractor shall insert the following clauses in subcontracts for commercial items:

i. 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

ii. 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

iii. 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));

iv. 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

v. 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

2. While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

d. The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.9 <u>FAR 52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit</u> (Jun 1997)

a. 1. In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the United States will assume freight charges that were paid:

i. By the Contractor under a cost-reimbursement contract; and

ii. By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

2. Cost-reimbursement Contractors shall only submit for audit those CBL's with freight shipment charges exceeding $50.00. Bills under $50.00 shall be retained on-site by the Contractor and made available for GSA on-site audits. This exception applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

b. The Contractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the:

General Services Administration
ATTN: FWA
1800 F Street, NW
Washington, DC 20405

The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

c. Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

d. A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show:

1. The name and address of the Contractor;

2. The contract number including any alpha-numeric prefix identifying the contracting office;

3. The name and address of the contracting office;

4. The total number of bills submitted with the statement; and

5. A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

I.10 DEAR 952.202-1 Definitions (Mar 2002)

a. "Head of Agency" means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.

b. "Commercial component" means any component that is a commercial item.

c. "Commercial item" means-

1. Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that-

i. Has been sold, leased, or licensed to the general public; or

ii. Has been offered for sale, lease, or license to the general public;

2. Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

3. Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for-

i. Modifications of a type customarily available in the commercial marketplace; or

ii. Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

4. Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

5. Installation services, maintenance services, repair services, training services, and other services if-

   i. Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

   ii. The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government

6. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services-

   i. "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

   ii. "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

7. Any item, combination of items, or service referred to in paragraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

8. A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

d. "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

e. "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

f. "Nondevelopmental item" means-

1. Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

2. Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

3. Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

g. Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

h. The term "DOE" means the Department of Energy, "FERC" means the Federal Energy Regulatory Commission, and "NNSA" means the National Nuclear Security Administration.

i. The term "Senior Procurement Executive" means, for DOE:
- Department of Energy -- Director, Office of Procurement and Assistance Management, DOE;
- National Nuclear Security Administration -- Administrator for Nuclear Security, NNSA; and
- Federal Energy Regulatory Commission -- Chairman, FERC.

I.11 <u>DEAR 952.203-70 Whistleblower Protection for Contractor Employees</u> (Dec 2000)

a. The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

b. The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE owned or leased sites.

I.12 DEAR 952.204-76 Conditional Payment of Fee or Profit--Safeguarding Restricted Data and Other Classified Information (Jan 2004)

a. General.

1. The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."

2. In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

3. Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information pursuant to the degrees specified in paragraph (c) of this clause.

b. Reduction Amount.

1. If in any period (see 48 CFR 952.204-76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range, (see 48 CFR 904.402(c)). The mitigating factors include, but are not limited to, the following:

i. Degree of control the contractor had over the event or incident.

ii. Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

iii. Contractor self-identification and response to the event to mitigate impacts and recurrence.

iv. General status (trend and absolute performance) of safeguarding Restricted Data and other classified information and compliance in related security area.

2. i. For purposes of this clause, (2)(i) Except in the case of performance-based firm-fixed-price contracts (see paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of the contract award, or soon as practicable

thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of 12 months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

ii. Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

3. For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information.

c. Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

1. First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

i. Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

ii. Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

iii. Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

iv. Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

2. Second Degree: Performance failures that have been determined, in accordance with applicable laws, regulation or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

   i. Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

   ii. Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

   iii. Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).

   iv. Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

3. Third Degree: Performance failures that have been determined, in accordance with applicable laws, regulation, or DOE directive, to actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import will be considered third degree:

   i. Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other classified information classified as Confidential.

   ii. Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

   iii. Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

iv. Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

I.13 DEAR 952.215-70 Key Personnel (Dec 2000)

a. The personnel listed in Section H, clause H.3, are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

1. Notify the Contracting Officer reasonably in advance;

2. Submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and

3. Obtain the Contracting Officer's written approval.

Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

b. The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

I.14 DEAR 952.216-7 Allowable Cost and Payment (Dec 2002) (Alternate II)

a. *Invoicing.*

1. The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR), in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

2. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

3. The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request

to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

b. *Reimbursing costs.*

1. For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

   i. Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

   ii. When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:

      A. Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made:

         1. In accordance with the terms and conditions of a subcontract or invoice; and

         2. Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

      B. Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

      C. Direct labor;

      D. Direct travel;

      E. Other direct in-house costs; and

      F. Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

   iii. The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

2. Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless:

   i. The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

   ii. The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

3. Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

4. Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

c. *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

d. *Final indirect cost rates.*

1. Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

2. i. The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

   ii. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

3. The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify:

   i. the agreed-upon final annual indirect cost rates,

   ii. the bases to which the rates apply,

   iii. the periods for which the rates apply,

   iv. any specific indirect cost items treated as direct costs in the settlement, and

   v. the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

   The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

4. Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

5. Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

6. i. If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may:

   A. Determine the amounts due to the Contractor under the contract; and

   B. Record this determination in a unilateral modification to the contract.

   ii. This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

e. *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates:

   1. Shall be the anticipated final rates; and

   2. May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

f. *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

g. *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be:

   1. Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

   2. Adjusted for prior overpayments or underpayments.

h. *Final payment.*

   1. Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

   2. The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable too costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final

payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

i. An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

ii. A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:

A. Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

B. Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contacting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

C. Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

I.15 Reserved

I.16 Reserved

I.17 DEAR 952.227-82 Rights to Proposal Data (Apr 1994)

Except for technical data contained on all pages of the contractor's proposal dated September 2, 2003, which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

I.18 DEAR 952.245-5 Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) (Jan 1986)

a. Government-furnished property.

1. The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

i. All or substantially all of the Contractor's business;

ii. All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or

iii. A separate and complete major industrial operation connected with performing this contract.

2. The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

3. The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

4. If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

5. If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

b. Changes in Government-furnished property.

1. The Contracting Officer may, by written notice,

i. Decrease the Government-furnished property provided or to be provided under this contract, or

ii. Substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract.

The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

2. Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any:

i. Decrease or substitution in this property pursuant to paragraph (b)(1) of this clause; or

ii. Withdrawal of authority to use property, if provided under any other contract or lease.

c. Title.

1. The Government shall retain title to all Government-furnished property.

2. Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

3. Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon:

i. Issuance of the property for use in contract performance;

ii. Commencement of processing of the property for use in contract performance; or

iii. Reimbursement of the cost of the property by the Government, whichever occurs first.

4. All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

d. Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

e. Property administration.

1. The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 and the DOE Acquisition Regulation Subpart 945.5, as in effect on the date of this contract.

2. The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5.

3. If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot

effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

f. Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

g. Limited risk of loss.

1. The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in paragraphs (g)(2) and (g)(3) of this clause.

2. The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage):

i. That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

ii. That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

iii. For which the Contractor is otherwise responsible under the express terms of this contract;

iv. That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

v. That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

3. i. If the Contractor fails to act as provided by subdivision (g)(2)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

ii. In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage:

A. did not result from the Contractor's failure to maintain an approved program or system; or

B. occurred while an approved program or system was maintained by the Contractor.

4. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

5. Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of:

   i. The lost, destroyed, or damaged Government property;

   ii. The time and origin of the loss, destruction, or damage;

   iii. All known interests in commingled property of which the Government property is a part; and

   iv. The insurance, if any, covering any part of or interest in such commingled property.

6. The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this paragraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

7. The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

8. In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

9. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

h. Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for:

1. Any delay in delivery of Government-furnished property;

2. Delivery of Government-furnished property in a condition not suitable for its intended use;

3. A decrease in or substitution of Government-furnished property; or

4. Failure to repair or replace Government property for which the Government is responsible.

i. Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice

and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

j. Abandonment and restoration of Contractor premises. Unless otherwise provided herein, the Government:

1. May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

2. Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (*e.g.*, abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

k. Communications. All communications under this clause shall be in writing.

l. Overseas contracts. If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

I.19 DEAR 970.5204-3 Access to and Ownership of Records (Dec 2000)

a. Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.

b. Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

1. Employment-related records such as:

i. employee relations records;

ii. records on salary and employee benefits;

iii. labor negotiation records;

iv. employee concerns, and other employee related investigations conducted under an expectation of confidentiality; and

v. employee assistance program records;

2. Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

3. Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government;

4. Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

5. The following categories of records maintained pursuant to the technology transfer clause of this contract:

   i. Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

   ii. The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

   iii. Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

c. Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

d. Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

e. Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

f. Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned

by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

g. Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

1. The value of the subcontract is greater than $2 million (unless specifically waived by the contracting officer);

2. The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or

3. The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.20 DEAR 970.5232-2 Payments and Advances (Dec 2000) (Alternate II)

a. Payment of total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the contracting officer.

b. Payments on Account of Allowable Costs. The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

c. Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account

Agreement, which is incorporated into this contract as Appendix-. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

d. Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

e. Financial settlement. The Government shall promptly pay to the contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the contracting officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:

1. Compliance by the contractor with DOE's patent clearance requirements, and

2. The furnishing by the contractor of:

   i. An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

   ii. A closing financial statement;

   iii. The accounting for Government-owned property required by the clause entitled "Property"; and

   iv. A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

      A. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

      B. Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential

claims under this clause, whether in litigation or not (see also Contract Clause--, DEAR 970.5228-1, "Insurance-Litigation and Claims");

C. Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and

D. Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

3. In arriving at the amount due the contractor under this clause, there shall be deducted,

i. Any claim which the Government may have against the contractor in connection with this contract, and

ii. Deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

f. Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.

g. Discounts. The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.

h. Collections. All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.

i. Direct payment of charges. The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefore.

j. Determining allowable costs. The contracting officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

k. (Alternate III, if contract with an integrated accounting system) Review and approval of costs incurred. The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 *(41 U.S.C. 256),* as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

l. (Alternate IV, if contract without an integrated accounting system) Certification and penalties. The contractor shall prepare and submit a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the contracting officer. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 *(41 U.S.C. 256),* as amended.

I.21 DOE AL-2002-02 Lobbying Restrictions (Energy and Water Development Appropriations Act, 2002)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

I.22 DOE AL-2002-02 Lobbying Restrictions (Department of Interior and Related Agencies Appropriations Act, 2002)

The Contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

I.23 WORK FOR OTHERS PROGRAM (NON-DOE FUNDED WORK) (JAN 2005)

(a) Authority to Perform Work for Others. Pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) or other applicable authority, the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause.

(b) Contractor's Implementation. The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.

(c) Conditions of Participation in Work for Others Program. The Contractor:

(1) Must not perform Work for Others activities that would place it in direct competition with the domestic private sector;

(2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;

(3) Must not commence work on any Work for Others activity until a Work for Others proposal package has been approved by the DOE Contracting Officer or designated representative;

(4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232-6;

(5) Must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Work for Others proposal;

(6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Work for

Others activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;

(7) Must perform all Work for Others projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE contractor's performance as defined in the DOE approved work for others proposal package; and,

(9) Must maintain a summary listing of project information for each active Work for Others project, consisting of:

(i) Sponsoring agency;

(ii) Total estimated costs;

(iii) Project title and description;

(iv) Project point of contact; and,

(v) Estimated start and completion dates.

(d) Negotiation and Execution of Work for Others Agreement.

(1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Work for Others project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Work for Others agreement.

(2) The Contractor must submit all Work for Others agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

(e) Preparation of Project Proposals. When the Contractor proposes to perform Work for Others activities pursuant to this clause, it may assist the project sponsor

in the preparation of project proposal packages including the preparation of cost estimates.

(f) Work for Others Appraisals. DOE may conduct periodic appraisals of the Contractor's compliance with its Work for Others Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) Annual Work for Others Report. The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Work for Others Activities under the contract.

J.6 List of Applicable Directives

The Directives listed below can be obtained from the following websites:

DOE Directives: http://www.directives.doe.gov/
DOE-RL CRD Supplements: http://rims.rl.gov/ch00l013.htm

Directive Identifier	Title	Date of Order or CRD	CRD Supplement
RRD 002	The Department of Energy Richland Operations Office (RL) Software Quality Assurance Requirement Document (SQARD)	Rev 0, February 2002	N/A
DOE-RL 94-02	Hanford Emergency Response Plan	Current Version	N/A
CRD DOE O 110.3	Conference Management	05/08/00	N/A*
CRD DOE O 130.1	Budget Formulation Process	09/29/95	None
CRD DOE O 142.1	Classified Visits Involving Foreign Nationals	1/13/04	N/A
CRD DOE O 142.3	Unclassified Foreign Visits and Assignments	6/18/04	N/A
CRD DOE O 151.1A	Comprehensive Emergency Management System	11/01/00	None
CRD DOE O 200.1	Information Management Program	09/30/96	Rev 1
CRD DOE O 205.1	Department of Energy Cyber Security Management Program	03/21/03	Rev 0
CRD DOE N 205.2	Foreign National Access to DOE Cyber Systems	11/01/99	None
CRD DOE N 205.3	Password Generation, Protection, and Use	11/23/99	None
CRD DOE M 205.1-1	Incident Prevention, Warning and Response (IPWAR) Manual	09/30/04	None
CRD DOE O 221.1	Reporting Fraud, Waste, and Abuse to the Office of Inspector General	03/22/01	None
CRD DOE O 221.2	Cooperation With the Office of Inspector General	03/22/01	None
DOE - 0223	RL Emergency Implementing Procedures	Current Version	N/A
CRD DOE O 225.1A	Accident Investigations	11/26/97	None