

<b>AWARD/CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER CPAS (15 CFR 350)	RATING	PAGE OF PAGE
2. CONTRACT (Proc. Inv. Ident. No.) DE-AC04-01AL88444		3. EFFECTIVE DATE DEC 14 2000	DO-E2	1   1
6. ISSUED BY U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400, Albuquerque, NM 87185-5400		7. ADMINISTERED BY (If other than item 6) U.S. Department of Energy Carlsbad Area Office P.O. Box 3060 Carlsbad, NM 88221-3060		

7. NAME AND ADDRESS OF CONTRACTOR (No. street, city, county, State and ZIP Code) Westinghouse TRU Solutions LLC P.O. Box 2078 (Mod M006) Carlsbad, NM 88220		8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)
		9. DISCOUNT FOR PROMPT PAYMENT
		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN: ITEM N/A

11. SHIP TO MARK FOR N/A	12. PAYMENT WILL BE MADE BY See Contract Clause 1-92
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13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 19 USC 253(a) ( ) <input type="checkbox"/> 41 USC 253(d) ( )	14. ACCOUNTING AND APPROPRIATION DATA N/A
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16A. ITEM NO.	16B. SUPPLIES/SERVICES	16C. QUANTITY	16D. UNIT	16E. UNIT PRICE	16F. AMOUNT
	See Sections B through J				

15G. TOTAL AMOUNT OF CONTRACT \$

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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE.

17.  CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return \_\_\_\_\_ copies to buying office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any construction sheets for the construction listed herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

18.  AWARDED (Contractor is not required to sign this document.) Your offer on Solicitation Number \_\_\_\_\_ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any construction sheets. This award encompasses the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award contract. No further contractual document is necessary.

18A. NAME AND TITLE OF SIGNER (Type or print) A.L. SCHWALLIE PRESIDENT & CEO WASHINGTON GROUP INTL. CONF.	18B. DATE SIGNED 14-DEC-2000	18C. NAME OF CONTRACTING OFFICER C.S. PRZYBYLAK, Acting Manager	18D. DATE SIGNED 12-14-00
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## SECTION B

### SUPPLIES OR SERVICES AND PRICES/COSTS

#### B.1 SERVICES BEING ACQUIRED

The Contractor shall, in accordance with the terms of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to providing its best efforts so as to carry out in an efficient and effective manner all necessary and related services to manage and operate the Government-owned Waste Isolation Pilot Plant (WIPP), located near Carlsbad, New Mexico as described in Section C, Statement of Work, or as may be directed by the Contracting Officer within the scope of this Contract.

#### B.2 ESTIMATED COST, MAXIMUM AVAILABLE FEE, AND AVAILABLE FEE

(a) Estimated Cost

- (1) The transition period (effective date of Contract through January 31, 2001) will be performed at no cost to the Government. There will be no fee paid for the transition period.
- (2) The Estimated Cost of the Fiscal Year (FY) 2001 period of performance is **Exemption 4**

(b) Fee:

- (1) The Estimated Fee Base as defined in Department of Energy Acquisition Regulations (DEAR) 970.15 for the entire FY 2001 is \$91,875,000. Due to the abbreviated performance period for FY 2001, the Maximum Available Fee for FY 2001 is **Exemption 4**
- (2) A Maximum Available Fee of **Exemption 4** shall serve as the Maximum Available Fee for FY 2002 – FY 2005 and Option Years FY 2006 - FY 2010 unless the Estimated Fee Base for a given fiscal year deviates by more than plus or minus 15% from the Estimated Fee Base set forth above for FY 2001.
- (3) In the event the Estimated Fee Base deviates for any fiscal year more than plus or minus 15% from the Estimated Fee Base (set forth in (b)(1) above), the Contractor agrees to negotiate with the U.S. Department of Energy (DOE) an equitable adjustment to the Maximum Available Fee amount to reflect the impact of such deviation. The new Maximum Available Fee for that fiscal year will be the amount calculated by DOE in accordance with

DEAR 970.15 (consistent with the FY 2001 fee computation methodology), multiplied by the ratio of the FY 2001 Maximum Available Fee in (b)(2) and Exemption 4 (See Section L-5 of the RFP). In the event the parties are unable to reach agreement on the Maximum Available Fee amount, the Government reserves the right to unilaterally establish the Maximum Available Fee amount.

- (4) The Available Fee for FY 2001 - FY 2005 and Option Years FY 2006 – FY 2010 will be negotiated annually (or any other period as may be mutually agreed to between the parties) between the Contractor and the Government. The Available Fee will be equal to or less than the Maximum Available Fee set forth in (b)(2) above. The Available Fee shall be established considering the level of complexity, difficulty, cost effectiveness, and risk associated with specific objectives/incentives defined in the Performance Evaluation and Measurement Plan (PEMP), including work which may involve multiple-site taskings/objectives. Higher or lower levels of complexity, difficulty, cost effectiveness, and risk will correspondingly allow a higher or lower available fee. The portion of this Available Fee, defined as award fee versus performance-based incentives, will be determined for each period during the negotiation of the requirements in the PEMP. In the event the parties are unable to reach agreement on the Available Fee amount, the Government reserves the right to unilaterally establish the Available Fee amount. The Contract will be modified to reflect the Available Fee for each period.
- (5) The Available Fees for the specified Contract periods are set forth below:

<u>Contract Periods</u>	<u>Available Fee</u>
February 1, 2001, through September 30, 2001	
Award Fee	Exemption 4
Performance-Based Incentive	Exemption 4
Total	Exemption 4

- (6) There will be no base fee under this Contract.

**B.3 AVAILABILITY OF APPROPRIATED FUNDS**

Except as may be specifically provided to the contrary in the Contract Clause entitled "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the U.S. Department of Energy (DOE) may legally spend for such purposes.

**B.4 OBLIGATION OF FUNDS**

Pursuant to the Contract Clause entitled "Obligation of Funds," the total amount obligated by the Government with respect to this contract is \$20,000,000.

**Part I - The Schedule**

**SECTION C**

**DESCRIPTION/SPECIFICATION/WORK STATEMENT**  
**DESCRIPTION OF WORK AND SERVICES**

**STATEMENT OF WORK**

**C.1 CONTRACT FOCUS**

The purpose of the WIPP is to protect human health and the environment by safe management and disposal of defense generated transuranic (TRU) waste.

**C.2 BACKGROUND**

- (a) The WIPP is a sixteen (16) square mile (10,240 acre) site owned by the United States Department of Energy (DOE) and is located in Southeastern New Mexico. The WIPP includes surface facilities and a geological repository located two thousand one hundred fifty (2150) feet below the surface. The Property Protection Area (PPA) at WIPP encloses approximately thirty-five (35) acres, and includes the majority of the buildings and structures at WIPP. The area outside the fenced PPA consists of otherwise undeveloped, high-desert terrain. Several administrative offices are located in the city of Carlsbad, some twenty-five (25) miles west of the WIPP.
- (b) The DOE Carlsbad Area Office (CAO) is responsible for administration of the Contract. The DOE Assistant Secretary for Environmental Management (EM) provides program direction to the CAO. The DOE Albuquerque Operations Office (DOE-AL) provides administrative support to the CAO. Sandia National Laboratories (SNL) is the Scientific Advisor to the CAO. SNL performs the scientific studies and computational activities associated with the long-term performance of the WIPP. The Carlsbad Technical Assistance Contractor (CTAC) provides technical support to the CAO, with the emphasis on audits and assessments. Other national laboratories and DOE facilities are funded by the CAO to perform specific tasks related to the WIPP mission.
- (c) The WIPP's siting phase began in 1975. The WIPP site was studied extensively, including, geologic, hydrologic, geomechanical and rock mechanics properties. Experimental programs not involving tests with radioactive materials were begun at that time. The selection phase ended in 1980 with the completion of the WIPP Final Environmental Impact Statement. The site and preliminary design validation phase followed site selection. Two shafts were constructed, and an underground test area was excavated. Geologic, hydrologic, and other

geotechnical investigations continued, and additional studies were initiated to expand the site characterization database.

- (d) During the ten-year construction phase, site data collection continued in parallel with the construction of surface and additional underground facilities. The DOE developed and refined tools and models to assess the performance of the TRU waste disposal system. The U. S. Environmental Protection Agency (EPA) began to develop guidance and standards for the management and disposal of radioactive waste.
- (e) In the pre-disposal phase, compliance with EPA regulations (40 CFR Sections 191 and 194) was documented in the Compliance Certification Application (CCA). The WIPP established its readiness to conduct disposal operations, and shipping sites began characterizing waste for shipment.
- (f) The disposal phase began on March 26, 1999, when the first shipment of waste was received at WIPP. The disposal of mixed-transuranic waste was authorized with the issuance of a Hazardous Waste Facility Permit by the New Mexico Environment Department. This permit was issued on October 28, 1999 and became effective on November 27, 1999.
- (g) All TRU wastes shipped to WIPP are required to use Type B packagings (shipping containers) certified by the U. S. Nuclear Regulatory Commission (NRC). The three packagings identified for WIPP are the TRUPACT-II and HalfPACT for Contact-handled TRU waste, and the 72-B cask for Remote-handled-TRU waste. Currently, all TRU waste is shipped by truck, but may also be shipped by rail in the future. The disposal phase will last approximately thirty-five (35) years, and will require an estimated thirty-eight thousand (38,000) shipments to WIPP. Following the disposal phase, the WIPP will enter its decommissioning phase lasting approximately five (5) years. During this five (5) year period, the repository will be permanently closed. Planned activities at the WIPP will require the site infrastructure to exist for approximately forty (40) years.
- (h) In the post-decommissioning phase, active institutional controls will be employed for at least one hundred (100) years to prevent human intrusion into the repository. Passive controls including permanent markers will warn future societies of the location and hazards of the disposal site.

### **C.3 OVERALL CONTRACTOR RESPONSIBILITIES**

#### **(a) GENERAL MANAGEMENT**

- (1) The Contractor shall be responsible for all operations at the WIPP. The Contractor recognizes that there are objectives associated with the vision

of the Government that shall be considered in the management and operation of the WIPP. These objectives are:

- (i) Safety and Environmental Management Excellence – Protection of the employees, the public and the environment; and
  - (ii) Operational Efficiencies –Pursue efficiencies in waste transportation and disposal.
- (2) The Contractor shall use its best judgment, skill, and care in the management, operation, and maintenance of the facilities, equipment and programs described in this statement of work. The Contractor shall perform the work and services in a manner that shall instill public confidence in the WIPP and meet all applicable federal, state and local laws; regulations, standards; and governing agreements and permits with regulatory and oversight governmental organizations. The Contractor shall also comply with the terms and conditions of this contract and in accordance with such Contracting Officer directions and approvals.
- (3) Pursuant to the Contract Clause entitled “Laws, Regulations, and DOE Directives,” the Contractor shall conform to the requirements of all applicable DOE Orders and Directives which may establish management, technical, procedural or other standards, and specifications for Contractor work activities. The Orders and Directives applicable to this Contract are contained at Section J, Attachment H.
- (4) The Contractor shall be fully responsible and accountable for the safe accomplishment of all work, whether performed by its own personnel or subcontractors. The Contractor shall be responsible for planning, integrating, managing and executing the programs, projects, operations and other activities as described in this statement of work such that all functions are fully integrated. The Contractor shall provide program management functions that include: legal services, audit services, business systems management, human resources, property management, information resources management, financial management, safeguards and security, public information and external communication activities, intergovernmental affairs, training, procurement, underground experimental support, and industrial relations. The Contractor shall also be responsible for operations, environment, safety, health and quality assurance within its own organization and its subcontractor organizations.
- (5) The Contractor shall, when directed by DOE and may, but only when authorized by DOE, enter into subcontracts for the performance of any part of the work required to support the WIPP.

- (6) The Contractor shall develop programs, capabilities and technologies consistent with the WIPP mission and to support emerging needs of Federal, non-Federal, educational institution and private sector partners.

(b) EM PROJECT MANAGEMENT

The Contractor shall maintain the existing project management system for the EM program including the EM project baselines, Integrated Planning, Accountability, and Budgeting System (IPABS), change control process, execution and life-cycle planning process (including standard project management handbook), the project cost-estimating system, continued update of an integrated site-wide baseline and critical path analyses. These processes shall be expanded to functional and crosscutting activities.

(c) ENVIRONMENTAL, SAFETY AND HEALTH (ES&H) and QUALITY ASSURANCE

The Contractor shall make ES&H excellence, including the Integrated Safety Management System, a cornerstone of all operations. The Contractor shall maintain WIPP certification under the DOE Voluntary Protection Program and the International Standards Organization (ISO) 14001 Environmental Management standard.

(1) WIPP SYSTEMS AND PROGRAMS

The Contractor shall maintain the existing Integrated Safety Management System (ISMS) which includes the International Standards Organization (ISO) 14001 Program, the Voluntary Protection Program (VPP), and the Standards and Requirements Identification Document (S/RID).

(2) PROTECTION OF WORKERS, THE PUBLIC, AND THE ENVIRONMENT

- (i) Protection of workers, the public, and the environment are responsibilities of the Contractor, using the ISMS.
- (ii) The Contractor shall:
  - (A) Take necessary actions to preclude injuries and fatalities, and keep worker exposures and environmental releases as low as reasonably achievable below established limits, minimize the generation of waste, and maintain or increase protection to the environment, public and worker safety and health.

- (B) Operate the WIPP as the DOE's co-permittee under the Hazardous Waste Facility Permit issued by the State of New Mexico.

(3) QUALITY ASSURANCE

The Contractor shall maintain the existing Quality Assurance Program Description (QAPD).

**C.4 PROGRAM DESCRIPTIONS and ACCOMPLISHMENTS**

The WIPP conducts site-specific and intra-site integration of TRU waste activities. To achieve the EM programmatic objectives, the Contractor shall be responsible for integrating waste management and environmental activities at the WIPP.

(a) WIPP DISPOSAL OPERATIONS

Facilities at the WIPP are used to receive and dispose of TRU waste in a safe and environmentally sound manner.

(1) INFRASTRUCTURE

(i) Long-term mission support

The Contractor shall maintain an integrated infrastructure program that includes long-term infrastructure reinvestment planning. The Contractor shall balance short-term pressures to improve operations with long-term infrastructure reinvestment planning. Infrastructure includes: business systems, functional specialties, roads and utilities, emergency management, facility safety, surveillance and maintenance, safeguards and securities, and asset maintenance.

(ii) Disposition of excess facilities, structures, and equipment

The Contractor shall disposition excess facilities, systems, structures, and equipment.

(iii) Land management, facility planning and dispositioning requirements

The Contractor shall maintain the WIPP Land Management Plan (LMP) and the Integrated Capital Asset Management Process Plan (ICAMP) and all necessary supporting systems including the asset

inventory, condition, master planning, geographic information system, space management, and risk assessment.

(2) OPERATIONS

(i) Waste Disposal Facilities

The Contractor shall manage, operate, maintain, repair and replace waste handling facilities, systems, and equipment. The Contractor shall actively pursue enhancements to waste handling facilities.

(ii) Mining Operations

(A) The Contractor shall maintain, operate and continually evaluate underground facilities and systems for cost effective and efficient operations. This includes establishing tradeoffs of new excavation versus remediation of existing spaces.

(B) The Contractor shall plan and schedule the development of underground disposal facilities to provide newly mined disposal panels on a "just-in-time" basis. Waste disposal panels shall be mined and outfitted so that they are ready for use when the previous waste disposal panel is filled and ready for closure. Table 1 describes the expected rates of waste panel mining from FY 2001 through FY 2005.

(iii) Contact-handled TRU Waste (CH-TRU) Disposal

The Contractor shall be responsible for disposal of CH-TRU waste. Table 1 describes the expected rates for disposal of CH-TRU waste, including the number of shipments and volume of waste, from FY 2001 through FY 2005.

(iv) Remote-handled TRU Waste (RH-TRU) Disposal

The Contractor shall be responsible for RH-TRU waste disposal, including facility modifications and operational readiness of WIPP RH-TRU facilities. Table 1 describes the expected rates for RH-TRU waste disposal, including the number of shipments and volume of waste, from FY 2001 through FY 2005.

(b) NATIONAL TRANSURANIC WASTE PROGRAM

The National Transuranic Waste Program (NTP) develops and manages a comprehensive waste management strategy for all TRU waste under the responsibility of the DOE. Key elements of the NTP include: 1) disposal of TRU waste at the WIPP as described in C.4(a); 2) Generator/storage site waste characterization and waste certification activities for which the Contractor shall assist the DOE as provided in C.4(b)(1); and 3) TRU waste transportation activities for which the Contractor is responsible as provided in C.4(b)(2) and C.4(b)(3).

(1) WASTE CHARACTERIZATION

The Contractor shall assist DOE in the establishment of characterization requirements for TRU waste to ensure that safety and regulatory limits are established for TRU waste.

(2) TRANSPORTATION PACKAGING

- (i) The Contractor shall maintain NRC-certified packagings (TRUPACT-II, HalfPACT, and 72-B cask) and records for packaging fabrication and maintenance.
- (ii) The Contractor shall assist DOE with technical and regulatory issues related to NRC-certified packagings. The Contractor shall prepare draft amendments to the Certificates-of-Compliance to authorize new waste forms for transport and to justify modifications to the existing conditions of use.
- (iii) The Contractor shall assist DOE with technical and quality oversight for the procurement of transportation packagings.

(3) TRANSPORTATION MANAGEMENT

- (i) The Contractor shall assist DOE in the certification of generator/storage sites compliance with transportation requirements, and with the authorization of shipments to WIPP.
- (ii) The Contractor shall assist shipping sites in the initial and continued use of TRUPACT-II, HalfPACT, and 72-B cask for shipping TRU waste.
- (iii) The Contractor shall utilize the TRANSCOM system to monitor empty shipments dispatched from the WIPP and inbound waste shipments. The Contractor shall prepare the integrated shipping schedule, which includes packagings (TRUPACT-II, HalfPACT, and 72-B cask), trailers, driver and tractor requirements.

- (iv) The Contractor shall assist DOE in activities related to the opening and maintenance of shipping corridors, including the administration of cooperative agreements and the provision of emergency response training along shipping corridors. Table 1 lists the shipping routes scheduled to be opened during the period FY 2001-FY 2005.
- (v) The Contractor shall assist DOE in the identification, analysis and resolution of issues related to waste transportation and emergency management with states, tribes and local government officials.

(c) PERMIT MODIFICATIONS FOR OPERATIONAL EFFICIENCY

(1) HAZARDOUS WASTE FACILITY PERMIT

The Contractor shall assist DOE with justification for and preparation of modifications to the Hazardous Waste Facility Permit issued by the State of New Mexico. The Contractor shall focus these efforts to remove permit requirements that increase the costs of transporting or disposing TRU waste, but provide no benefits to the health and safety of workers, the public or the environment.

(2) COMPLIANCE CERTIFICATION

The Contractor shall assist DOE with modifications to the 40 CFR Sections 191 and 194 Compliance Certification Application (CCA) in conjunction with the five-year resubmission of the CCA to the EPA. The Contractor shall focus these efforts to justify the removal of CCA requirements that increase the costs of characterizing, certifying, transporting or disposing of TRU waste, but provide no benefits to the health and safety of workers, the public or the environment.

(d) RESEARCH AND DEVELOPMENT PROGRAMS

(1) R&D FOR PROGRAM EFFICIENCIES

The Contractor shall propose research and development initiatives that have the objective of improving the operational efficiency of the WIPP and the National TRU Program. These initiatives will be submitted to DOE for approval.

(2) OTHER EXPERIMENTAL PROGRAMS

The Contractor shall assist the DOE with experiments and demonstrations in support of other programs not associated with transuranic waste disposal, using the unique characteristics and facilities of WIPP.

(e) PARTNERING AGREEMENT

The Contractor and the Government will establish a Partnering Agreement for work related to the operation of the site. The agreement will establish a common vision with supporting goals and missions. It will promote the principles of teamwork, mutual respect, openness, honesty, trust, professionalism and build a better understanding of one another's position. The agreement will also include a joint commitment to:

- (i) Maintain high safety performance.
- (ii) Complete the project on schedule, within cost.
- (iii) Eliminate barriers to a faster, more cost effective and efficient program.
- (iv) Create an organizational culture able to accommodate change
- (v) Resolve conflicts through a coordinated work effort to avoid adversarial relations.
- (vi) Reinforce the partnered relationship with honest feedback and continual improvement.

**C.5 TABLE 1 - EXPECTED WIPP PROGRAM ACTIVITIES FY 2001-2005**

Activity	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Disposal Panels	Close Panel 1 Disposal in Panel 2 Mine Panel 3	Disposal in Panel 2 Mine Panel 3	Disposal in Panel 2 Mine Panel 3	Close Panel 2 Disposal in Panel 3 Mine Panel 4	Disposal in Panel 3 Mine Panel 4
CH-TRU Transportation	485 shipments	806 shipments	917 shipments	1,245 shipments	970 shipments
CH-TRU Waste Disposal	3,450 cubic meters	6,000 cubic meters	5,600 cubic meters	7,500 cubic meters	5,500 cubic meters
RH-TRU Transportation	Procure 72-B cask	9 shipments	78 shipments	138 shipments	126 shipments
RH-TRU Waste Disposal	Complete RH facility and equipment modifications	RH Operational Readiness Review 8 cubic meters	71 cubic meters	126 cubic meters	116 cubic meters

Transportation Corridors		Open NTS Corridor Open ORNL Corridor	Open ANL-E/ Mound Corridor Open LLNL Corridor		
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All transportation and waste disposal estimates as of November 10, 1999, per the Integrated Planning and Budgeting System (IPABS). Estimates are subject to change based on budgetary constraints and revised programmatic direction.

## C.6 ACRONYMS

CAO	Carlsbad Area Office
CCA	Compliance Certification Application
CFR	Code of Federal Regulations
CH-TRU	Contact-handled Transuranic Waste
CTAC	Carlsbad Technical Assistance Contractor
DOE	U. S. Department of Energy
DOE-AL	Albuquerque Operations Office
EM	Assistant Secretary for Environmental Management
ES&H	Environment, Safety and Health
EPA	U. S. Environmental Protection Agency
HalfPACT	Half-height Transuranic Waste Package Transporter
ICAMP	Integrated Capital Asset Management Process
IPABS	Integrated Planning, Budgeting and Accountability System
ISMS	Integrated Safety Management System
ISO	International Standards Organization
LMP	Land Management Plan
NRC	<b>U. S. Nuclear Regulatory Commission</b>
NTP	National Transuranic Waste Program
PPA	Property Protection Area
QA	Quality Assurance
RH-TRU	Remote-handled Transuranic Waste
SNL	Sandia National Laboratories
S/RID	<b>Standards and Requirements Identification Document</b>
TRU	Transuranic Waste
TRUPACT-II	Transuranic Waste Package Transporter Type II
VPP	Voluntary Protection Program
WIPP	Waste Isolation Pilot Plant

Part I - The Schedule

SECTION D

PACKAGING AND MARKING

D.1 RESERVED

**Part I - The Schedule**

**SECTION E**

**INSPECTION AND ACCEPTANCE**

**E.1 INSPECTION OF SERVICES--COST-REIMBURSEMENT (FAR 52.246-5) (APR 1984)**

- (a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by re-performance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

**E.2 ACCEPTANCE**

Acceptance for all work and effort under this contract shall be accomplished by the Contracting Officer or any other duly authorized representative.

**Part I - The Schedule**

**SECTION F**

**DELIVERIES OR PERFORMANCE**

**F.1 TERM OF CONTRACT**

- (a) The Term of this Contract shall be from the effective date of the Contract through September 30, 2005, unless sooner terminated in accordance with the provisions of this Contract. The period from the effective date of the Contract through January 31, 2001, shall be for the transition from the existing contractor to the successor contractor. The contractor's responsibility for management and operation of the WIPP shall start on February 1, 2001.
- (b) The period of performance may be extended in accordance with Sections F.3 and F.4. If the option period is exercised, the total period of performance shall be through September 30, 2010.

**F.2 PRINCIPAL PLACE OF PERFORMANCE**

The work under this Contract is to be carried out at a variety of locations, but the principal place of performance will be the Waste Isolation Pilot Plant site near Carlsbad, New Mexico.

**F.3 OPTION TO EXTEND THE TERM OF THE CONTRACT**

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days, provided that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 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 provision.
- (c) The total duration of this contract shall not exceed ten years, not including the transition period.

**F.4 EXERCISE OF OPTION(S)**

- (a) The DOE has included an option to extend the term of this Contract in order to demonstrate the value it places on quality performance. The DOE has provided a mechanism for continuing a contractual relationship with a successful Contractor

that performs at a level which meets or exceeds quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Contractor's performance under this Contract.

- (b) The Option Periods, covering the period from October 1, 2005 to September 30, 2010, may be for a period(s) from one to five years. The Contracting Officer will determine the duration of the option period(s) at the time of written notification to the Contractor. Successive options may be exercised up to a total of five years. The total term shall not extend beyond September 30, 2010.

**F.5 STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)(ALTERNATE D) (APR 1984)**

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the order during the period of work stoppage. Within a period for 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Termination Clause of the contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if--
  - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may

receive and act upon a proposal submitted at any time before final payment under this contract.

- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**Part I - The Schedule**

**SECTION G**

**CONTRACT ADMINISTRATION DATA**

**G.1 TECHNICAL AND ADMINISTRATIVE CORRESPONDENCE/MATTERS**

To promote timely and effective administration, correspondence submitted by the Contractor under this Contract shall be subject to the following procedures:

- (a) **Technical and Administrative Correspondence/Matters.** Technical and administrative correspondence (as used herein, excludes other correspondence described in Paragraph (b)) concerning performance of this contract shall be addressed to the Area Manager, Carlsbad Area Office (CAO). The CAO Area Manager or designee is the Contracting Officer for administration of technical and administrative matters for this Contract. The Contractor shall use the DOE CAO as the focal point for all technical and administrative matters regarding this Contract. The CAO Area Manager or designee also has the authority to modify the estimated cost set forth in Section B-2, Estimated Cost, Maximum Available Fee, and Available Fee.
- (b) **Other Correspondence.** Other correspondence, including waivers, deviations, or modifications to the requirements, terms, or conditions of this Contract, shall be addressed to the Contracting Officer at the DOE Contracting Office with a copy to the Administrative Contracting Officer.
- (c) **DOE Contracting Office.** The Contracting Officer's address is:  
  
Manager, Albuquerque Operations Office  
U.S. Department of Energy  
Albuquerque Operations Office  
Management and Operating Contracts Division  
P. O. Box 5400  
Albuquerque, NM 87185-5400
- (d) **Patents/Technical Data Correspondence.** Correspondence concerning patent and technical data issues shall be addressed to the Assistant Chief Counsel for Intellectual Property, Office of Chief Counsel, Albuquerque Operations Office, U.S. Department of Energy, P.O. Box 5400, Albuquerque, New Mexico, 87185-5400.
- (e) **Subject Lines(s).** All correspondence shall contain a subject line commencing with the Contract Number, as illustrated below:

"SUBJECT: Contract No. DE-AC04-00AL66444 (insert subject topic after Contract Number, e.g., "Request for subcontract placement approval")."

**G.2 GOVERNMENT CONTACT FOR CONTRACT ADMINISTRATION**

Contract Administration Office. The address of the Contracting Officer for administration is:

Area Manager, Carlsbad Area Office  
Administrative Contracting Officer  
U.S. Department of Energy  
Carlsbad Area Office  
P.O. Box 3090  
Carlsbad, NM 88221

**Part I - The Schedule**

**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

**H.1 REPRESENTATIONS AND CERTIFICATIONS**

The Representations, Certifications, and Other Statements of Offeror for this Contract as completed by the Contractor are hereby incorporated in this Contract by reference.

**H.2 MODIFICATION AUTHORITY**

Notwithstanding any of the other provisions of this contract, a Contracting Officer shall be the only individual on behalf of the Government to:

- (a) Accept nonconforming work;
- (b) Waive any requirement of this contract; or
- (c) Modify any term or condition of this contract

**H.3 SUBCONTRACT LABOR LAW APPLICATION**

- (a) For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. et seq.), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- (b) For subcontracts relating to construction, refer to the Contract Clause entitled "Government Facility Subcontract Approval."

**H.4 EVALUATION OF SUBCONTRACTORS**

The DOE and Contractor are committed to zero accidents at WIPP. To that end, the Contractor will evaluate all site subcontractors to ensure that they have an acceptable environment, safety and health program, a program which contains the following values:

- (a) Compliant with applicable local, state and federal regulatory requirements;
- (b) Employees are properly trained and equipped to perform their assigned work. The Company has an established orientation program for new hires;
- (c) Policies and procedures are in place to eliminate accidents, injuries/ illnesses, and damage to property and equipment;

- (d) ES&H records are adequately and properly maintained;
- (e) Accidents/ incidents are investigated promptly and required reports are generated. If the investigation discovers inadequacies in either the work process or the policies and procedures, the appropriate processes are put in place to avert the accident/incident in the future and personnel are provided proper training;
- (f) Hazards are identified and appropriate measures are taken to ensure that personnel and equipment are adequately protected as a result of identified hazards;
- (g) Employees have the right to report unsafe conditions and to interrupt or stop work without fear of reprisal;
- (h) The frequency of ES&H meetings with employees to discuss the work to be performed and the hazards associates with the work is based upon the scope of work and commensurate with the work hazards;
- (i) ES&H inspections/audits are conducted to evaluate the effectiveness of the program;
- (j) The Company has an average Experience Modification Rate (EMR), Occupational Safety and Health Administration (OSHA) Recordable and Lost Workday case rates(s) of (1.0, 3.2, and 0.64), respectively, or less, for the previous three (3) years and shows an improving trend in safety performance;
- (k) The Company has an established written Hazards Communication Program and a system within the program to maintain Material Safety Data Sheets (MSDS);
- (l) The Company has had no willful citations from OSHA or other regulatory organizations during the previous three (3) years;
- (m) The Company has received no citations, other than those determined to be minor violations, or fines for Price-Anderson Amendments Act (PAAA) non-compliances during the previous three (3) years;
- (n) The Company has received no fines for Nuclear Regulatory Commission non-compliances during the previous three (3) years.

## **H.5 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN**

The Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan with goals, submitted by the Contractor consistent with the provisions of the

Contract Clause entitled, "Small Business Subcontracting Plan" and approved by the Contracting Officer is incorporated into this Contract as Section J, Attachment B. Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual" subcontracting plan which shall establish subcontracting goals, as described in paragraph (d)(1) and (2) of Contract Clause entitled "Small Business Subcontracting Plan" (FAR 52.219-9). The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated into this Contract.

#### **H.6 SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS PARTICIPATION TARGETS**

Small Business and Small Disadvantaged Business participation targets submitted by the Contractor in its proposal for purposes of evaluation for award will be incorporated into this Contract. To the extent that such concerns specifically were identified in the proposal, they are also incorporated into this Contract and the Contractor shall notify the Contracting Officer of any substitutions of firms. The Contractor's performance in meeting the targets contained in its proposal and its demonstrated commitment to maximizing the participation of Small Business and Small Disadvantaged Business concerns in Contract performance will be assessed as part of the award fee determination under this Contract.

#### **H.7 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT**

On February 1, 2001, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract No. DE-AC04-86AL31950

#### **H.8 INTEGRATED ACCOUNTING**

Integrated accounting procedures are required for use under this Contract. The Contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this Contract in accordance with requirements imposed by the Contracting Officer pursuant to the Contract Clause entitled "Laws, Regulations, and DOE Directives."

#### **H.9 FINANCIAL MANAGEMENT SYSTEM**

The Contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this Contract, expenditures, costs and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The Contractor shall submit to DOE for written approval an

annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the Contracting Officer, shall submit any such deviation to DOE for approval before implementation.

#### **H.10 WORK FOR OTHERS FUNDING AUTHORIZATION**

Any uncollectible receivables resulting from the Contractor utilizing Contractor corporate funding for reimbursable work shall be the responsibility of the Contractor, and the Government shall have no liability to the contractor therefor. The Contractor is permitted to provide advance payment utilizing Contractor corporate funds for reimbursable work to be performed by the Contractor for a non-Federal entity in instances where advance payment from that entity is required under the Contract Clause entitled "Laws, Regulations, and Directives" and such advance cannot be obtained. The Contractor is also permitted to provide advance payment utilizing Contractor corporate funds to continue reimbursable work to be performed by the Contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Contract Clause entitled "Laws, Regulations, and Directives" have elapsed. The Contractor's utilization of Contractor corporate funds does not relieve the Contractor of its responsibility to comply with all requirements for Work for Others applicable to this Contract.

#### **H.11 APPROVAL OF EXPENDITURES**

Whenever approval of other action by the Contracting Officer is required with respect to any expenditure or commitment by the Contractor under the terms of this Contract, the Government shall not be responsible for such expenditures or commitments unless and until such approval or action is obtained or taken.

#### **H.12 PUBLIC AFFAIRS**

- (a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel.
- (b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open

- houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
- (c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.
  - (d) The Contractor must comply with established DOE procedures for obtaining advance clearances on all oral, written, and audio/visual informational material prepared for public dissemination or use.
  - (e) Unless prohibited by law, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of any communications or contacts with Members of Congress relating to the effort performed under the contract.
  - (f) The Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of any activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.
  - (g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

### **H.13 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS**

On February 1, 2001, the Contractor shall assume responsibility for existing contracts and other agreements from Contract Number DE-AC04-86AL31950. These include: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permit requirements, (e) collective bargaining agreements, (f) site-wide plans (e.g., safety and security plans), and (g) other agreements in effect prior to execution of this Contract.

### **H.14 PRIVACY ACT SYSTEMS OF RECORDS**

- (a) The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Contract Clause entitled "Privacy Act."

<u>DOE System No.</u>	<u>Title</u>
DOE-33	Personnel Medical Records-DOE and Contractor Employees
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-48	Security Education and/or Infraction Reports

DOE-51 Employee and Visitor Access Control Records  
DOE-52 Alien Visits and Participation

- (b) The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as may be necessary to keep it current. Such changes need not be formally incorporated before the annual contract update modification, but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in Paragraph (a)(1) of the Contract Clause entitled "Privacy Act."

#### **H.15 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS**

- (a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the Contract Clauses entitled, "Cost Accounting Standards" and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.
- (b) The Contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the Contract Clauses at FAR 52.230-2, "Cost Accounting Standards", and FAR 52.230-6, "Administration of Cost Accounting Standards," if the Contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

#### **H.16 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)**

Documents originated by the Contractor or furnished by the Government to the Contractor in connection with this Contract may contain Unclassified Controlled Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives.

#### **H.17 TECHNICAL DIRECTION**

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

- (1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.
  - (2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
  - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.
- (b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
  - (2) Constitutes a change as defined in the Contract Clause entitled "Changes;"
  - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the contractor's right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to

modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:

- (1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Contract Clause entitled "Changes."
  - (2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order.
- (f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect the technical direction will be subject to the provisions of the Contract Clause entitled "Disputes."

#### **H.18 COMMUNITY COMMITMENT**

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and, (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

#### **H.19 CONTRACTOR EMPLOYEES/NON-CONTRACT ACTIVITIES**

- (a) In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the DOE or the Government; however, nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.
- (b) The Contractor's employees engaged in the performance of this Contract may remain on the payroll of the WIPP and be used to perform incidental work for the Contractor that may be unrelated to the scope of work of this Contract, provided however that: these activities do not interfere with work under this Contract; no costs, expense or liabilities, including accrued pension service, resulting from the performance of such activities shall be allowable costs under the Contract; and the Contractor shall indemnify and hold harmless DOE against any claims or

expenses resulting from such activities. Further, the Contractor shall make advance payment for such activities to the Special Financial Institution Account For Use With The Payments Cleared Financing Agreement referred to in Section J, Attachment E hereof, in manner and amount consistent with current non-federal Work-for-Others rates and procedures, and DOE financial policies and procedures, as determined by the Contracting Officer. Payments so made shall become part of the advances of Government funds as described in the contract clause entitled "Payments and Advances." Prior written approval of the Contracting Officer shall be required for any "Key Personnel" as defined in Section J, Attachment F, to be so used. The Contractor shall submit to the Contracting Officer a quarterly written report on other employees who have been so used.

- (c) The parties recognize that performance of activities described in paragraph (b) above may result in the generation of records. The parties agree that any records (excluding, however, records required to determine costs, expenses, or liabilities related to activities in (b) above), being paid for out of corporate and not Contract funds are owned by the Contractor and DOE shall have the right to inspect, copy, or audit such records as set forth in the contract clause entitled "Access To and Ownership of Records."
- (d) Upon written approval of the Contracting Officer, the Contractor may use corporate employees, not employed under the Contract, for incidental work under the Contract. Salary reimbursement for the time such employees work under this Contract will be determined in accordance with the employee's regular work location's government-approved costing practices. Time worked under this Contract for such corporate employees will include time spent by the employees en route to and returning from the work site on the first and last day of such work. Travel costs of such corporate personnel will be allowed in accordance with travel policies that are contained elsewhere in this Contract.

## **H.20 CONTRACTOR'S MANAGERIAL PERSONNEL**

For the purpose of identifying the Managerial Personnel defined in the Contract Clauses entitled "Property," "Allowable Costs, Base Fee and Performance Fee," and "Insurance Litigations and Claims," Managerial Personnel are the same as those Key Personnel identified in Section J, Attachment F of this Contract.

## **H.21 KEY PERSONNEL**

- (a) The Key Personnel listed in Section J, Attachment F, of this contract, are considered to be essential to the work being performed on this contract. Accordingly, if the Senior Manager is replaced for any reason within two (2) years of contract award, earned fee will be reduced by \$100,000. In addition, if any

other Key Person identified on the Key Personnel List is replaced for any reason within two (2) years of contract award, earned fee will be reduced by \$50,000. The combined total maximum reduction to earned fee shall be \$500,000.

- (b) The Contractor may request, in writing, that the Contracting Officer waive all or part of a reduction, if special circumstances exist. The Contracting Officer shall have unilateral discretion to waive or not to waive all or part of a reduction.

## **H.22 RESERVED**

## **H.23 PERFORMANCE IMPROVEMENT AND COLLABORATION**

- (a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.
- (b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.
- (c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.

- (d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

#### **H.24 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS**

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

#### **H.25 TRAVEL RESTRICTIONS**

- (a) For Contractor travel expenses incurred on or after October 1, 2000 a ceiling limitation of           TBD           shall apply to all reimbursements made for Contractor travel expenses under this contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the Contracting Officer.
- (b) Notwithstanding any other provisions of the Contract, the Contractor further agrees that none of the funds obligated under the Contract may be used to reimburse employee travel costs incurred on or after October 1, 2000 and before October 1, 2001 which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code. Costs which exceed these rates and amounts will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.
- (c) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
  - (1) Federal Travel Regulations (FTR) for travel within the 48 states;
  - (2) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
  - (3) Standardized Regulations (SR) for travel allowances in foreign areas.
- (d) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverage in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to contractor travel.

- (e) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

## **H.26 LIMITATION OF LONG TERM LIABILITY REGARDING PERSONNEL COSTS**

It is DOE's goal to develop an approach to personnel costs which maintains the full value of worker's benefits packages while at the same time limiting DOE's long term liability. The Contractor agrees to submit a plan to DOE during FY 2001 for achieving this goal.

## **H.27 ADVANCE UNDERSTANDING ON HUMAN RESOURCES FOR WIPP**

- (a) Advance Understanding on Human Resources
  - (1) The Department and the successful Offeror will reach an advance understanding on contractor human resources during the transition period. The advance understanding enables both the Contractor and the Department to determine allocability, allowability and reasonableness of costs prior to incurrence, thereby avoiding subsequent disallowance and disputes; provide appropriate and reasonable compensation levels to recruit and retain contractor employees to meet DOE mission objectives; and assure prudent expenditure of public funds. Areas generally covered by the advance understanding include compensation, welfare benefits, labor relations, retirement plans, training, educational assistance, awards programs, employee assistance, and paid leave and holidays. It is understood that the Advance Understanding on Human Resources for WIPP will be appended to the contract as Section J, Attachment A.
  - (2) It is the Department's intent to ensure that the Contractor's human resources policies adequately support their ability to attract and retain critically skilled employees. Moreover, it is the contractor's responsibility to notify DOE when any obstacles are encountered that could impact the recruitment and retention of critically skilled employees.
- (b) Employee Transition and Continuity of Employment, Pay and Benefits

- (1) In order to minimize unnecessary disruption to the existing workforce and to minimize severance costs, the incumbent contractor's non-represented, non-management employees who transfer to the Contractor shall retain equivalent pay and benefits.
- (2) At the time the Contractor becomes responsible for the work, all current incumbent non-supervisory/non-management employees of the incumbent Contractor shall become employees of the new Contractor. DOE expects the Contractor to subsequently exercise appropriate managerial judgement regarding employee retention and job assignments. All represented employees will retain pay in accordance with collective bargaining agreements. It is the intent of the parties that the Contractor assumes sponsorship of the incumbent contractor's defined benefit pension plan. However, it is recognized that there may be reasons that a new Contractor may not be able, or that it may not be feasible, to continue the exact benefit plans that the incumbent has in place. The Contractor shall continue, with minimal disruption to the workforce, defined contribution, health and welfare, and leave of absence programs that are substantially equivalent to the programs maintained by the incumbent contractor for its employees.
- (3) Continued employment of employees in the top management positions (General Manager, Deputy General Manager, and personnel who manage the following functions - Operations; Environment, Safety and Health; Quality Assurance; Controller; Engineering; Program Management; Human Resources; and Communications) is at the discretion of the Contractor.
- (4) All other supervisory/management employees below these top positions will become employees of the Contractor; however, it is not mandatory that they remain in their current position or at their current level. Any changes in position or job classification shall be accompanied by alterations in compensation commensurate with the change in position.
- (5) No severance pay is warranted on the date incumbent employees transition to the Contractor since the transition occurs under equivalent employment conditions. These employees will retain their severance pay benefits earned with the incumbent contractor, plus any severance pay based on service with the Contractor, and will be paid applicable severance if subsequently involuntarily terminated (except for cause) under the terms of the Contractor's severance policy. Prorated repayment of severance pay will be required should an individual be subsequently re-employed by the Contractor under equivalent pay and benefits, based upon the length of time between separation and new hire date.

- (6) The requirements contained in this clause take precedence over the Contract Clause entitled "Displaced Employee Hiring Preference."

(c) Labor Relations

- (1) The Contractor shall maintain positive labor-management relations. The Contractor shall respect the right of employees to self-organize, to form, join, or assist the labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also to have the right to refrain from any or all of such activities.
- (2) As the Contractor will be responsible at the time of transition for performing substantially the same operations at WIPP as the incumbent contractor, and for hiring all of the current incumbent contractor non-management employees who are represented by the Paper, Allied-Industrial, Chemical & Energy Workers (PACE) International Union, AFL-CIO, Local 4-9477, the Contractor shall be obligated to recognize the current bargaining agents and their existing collective bargaining agreements.
- (3) The Contractor is expected to maintain a positive employee relations environment that will foster high productivity at reasonable cost. The Contractor shall implement an effective employee concerns resolution process.

(d) Continuity of Service Credit

All employees of the incumbent Contractor will maintain their current service credit date for benefit earnings, consistent with paragraph (b) above.

## H.28 THIRD PARTIES

Nothing contained in this contract, or its amendments, shall be construed to grant, vest, or create any rights in any person not party to this contract. This provision is not intended to limit or impair the rights which any person may have under applicable Federal Statutes.

## H.29 REPORTING REQUIREMENTS

- (a) Work Breakdown Structure (WBS). Except as provided for elsewhere in the contract, the WBS, as approved by the Contracting Officer, shall provide the basis for all reports required under this subsection. The WBS shall be derived from the

Statement of Work (SOW) of this contract and shall otherwise conform to any implementation guidance which may be provided by the Contracting Officer.

- (b) **Periodic Plans and Reports.** The Contractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The plans and reports expected to be submitted by the Contractor are described generally as follows:
- (1) General Management Reports narratively summarize schedule, labor, and cost plans and status, and provide explanations of status variances from plans.
  - (2) Schedule/Labor Cost Reports provide information on schedule, labor and cost plans and status.
  - (3) Performance Measurement Reports provide information regarding budgeted cost versus actual cost, schedule performance against milestones and estimated cost at completion.
  - (4) Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.
  - (5) Plans and reports shall be prepared by the Contractor in such a manner as to provide for--
    - (i) consistency with the contract Statement of Work, the approved WBS, and the existing accounting structure; and
    - (ii) correlation of data among the various plans and reports.
- (c) **Changes in Work Effort.** The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Control System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the SOW or Work Authorization Directives (WADs). The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer.

- (1) incorporate contractual changes affecting estimated cost, schedule, and other relevant terms and conditions of the Contract, in a timely manner;
  - (2) reconcile estimated costs for those elements of the WBS identified in the Contract as either priced line items or discrete WADs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:
    - (i) Changes to the authorized work; and,
    - (ii) Internal replanning in the detail needed by management for effective control.
  - (3) prohibit retroactive changes to records pertaining to work performed that will change previously-reported costs except for correction of errors and routine accounting adjustments;
  - (4) prevent revisions to the Contract estimated costs except for Government-directed or approved changes to the contractual effort; and
  - (5) document, changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- (d) The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's reporting system described in (b) above.
- (e) The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when--
- (1) the value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, or
  - (2) the Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the contract.

### **H.30 DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect Contract work. Based on the Contracting Officer's direction,

the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

### H.31 WORK ALLOCATION

- (a) It is DOE policy to foster labor peace and encourage work allocation in such a manner that the work will be performed in an expeditious and resource-economical fashion by trained employees. Occasionally, work which does not clearly fall within the jurisdiction of any single labor or collective bargaining agreement to which the Contractor is a party, must be performed (such work is hereinafter referred to as "Unassigned Work").
- (b) The Contractor shall establish a process, consistent with applicable DOE guidance, that is reasonably calculated to allocate Unassigned Work in a manner agreeable to the affected unions and consistent with the requirements of applicable law and the terms of this Contract.
- (c) Nothing in this clause shall be construed to restrict the Contractor from performing Unassigned Work in accordance with either the terms of this Contract or written direction of the Contracting Officer.

### H.32 SEPARATE CORPORATE ENTITY

The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent company(ies). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.

### H.33 RESPONSIBLE CORPORATE OFFICIAL

Notwithstanding the Section H provision entitled "Performance Guarantee," the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor. Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: \_\_\_\_\_  
(Offeror complete)

Position: \_\_\_\_\_  
(Offeror complete)

Company: \_\_\_\_\_  
(Offeror complete)

### H.34 PERFORMANCE GUARANTEE

The Contractor is required by other provisions of this Contract to organize a dedicated corporate entity to carry out the work under the Contract. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance as evidenced by the Performance Guarantee Agreement incorporated in the Contract in Section J, Attachment G. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

### H.35 CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties, unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
- (1) Information which, at the time of receipt by the Contractor, is in public domain;
  - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
  - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
  - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or information data it is given access to or is furnished, restricting use and disclosure of the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (e) This clause shall flow down to all appropriate subcontracts.
- (f) Technical data is addressed in DEAR 970.5204-82.

### **H.36 AUTHORIZATION AND CONSENT – RESEARCH AND DEVELOPMENT SUBCONTRACTS**

The Contractor agrees to include the “Authorization and Consent” clause at FAR 52.227-1 with its Alternate 1, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities.

### **H.37 AGREEMENT REGARDING PATENT AND DATA CLAUSES**

The Department of Energy anticipates the promulgation of revisions to the following clauses of this contract prior to, or shortly after, the award of this Contract. Subsequent to such promulgation, the Contractor agrees to negotiate, in good faith, the substitution of these revised clauses for the corresponding existing contract Clauses.

FAR 52.227-1, "Authorization and Consent"  
FAR 52.227-2, "Notice and Assistance Regarding Patent and Copyright Infringement"  
FAR 52.227-23, "Rights to Proposal Data"  
DEAR 952.227-9, "Refund of Royalties"  
H.37, "Patent Indemnity – Subcontracts"  
H.38, "Royalty Information"

### **H.38 PATENT INDEMNITY – SUBCONTRACTS**

Except as otherwise authorized by the Contracting Officer, the Contractor must obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 52.227-3, entitled "Patent Indemnity."

### **H.39 REFUND OF ROYALTIES**

- (a) The contract price includes certain amounts for royalties, payable by the Contractor or subcontractors or both, reported to the Contracting Officer in accordance with the Royalty Information provision of the solicitation.
- (b) During performance of the Contract, if any additional royalty payments are proposed to be charged to the Government as costs under the Contract that were not included in the original contract price, the Contractor agrees to submit for approval of the Contracting Officer prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:
  - (1) Name and address of licensor;
  - (2) Date of license agreement;
  - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
  - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
  - (5) Percentage or dollar rate of royalty per unit;
  - (6) Unit price of contract item;
  - (7) Number of units; and
  - (8) Total dollar amount of royalties.
  - (9) In addition, if specifically requested by the Contracting Officer, the Contractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents, copyrights, or other data.

- (c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or subcontracts, or the copying of such data or data that is copyrighted.
- (d) The Contractor must furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder.
- (e) The Contractor is compensated for any royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract.
- (f) The Contracting Officer shall reduce the contract price to the extent any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract. The Contractor agrees to repay or credit the Government accordingly, as the Contracting Officer directs. Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- (g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor must promptly notify the Contracting Office of that fact and must promptly reimburse the Government in a corresponding amount.
- (h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (f), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

**Westinghouse TRU Solutions LLC**  
**Contract No. DE-AC04-01AL66444**

**SECTION I**

**PART II – CONTRACT CLAUSES**

**Part II - Contract Clauses**

**Section I**

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Note 1: The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1), the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9), and the U.S. Department of Energy Procurement Regulations (DOE-PR) (41 CFR Chapter 9).

Note 2: Consistent with DEAR 970.5202, DEAR clauses indicated as “(Modified)” means that a minor change(s) in wording of the clause has been made for the purpose of clarification only and not with the intent of altering the meaning, intent, substance, or the principles expressed in the clause.

Part II

Section I

CONTRACT CLAUSES

1. **FAR 52.202-1 DEFINITIONS (OCT 1995) (As modified by DEAR 952.202-1 DEFINITIONS (MAR 1995))**
  - (a) The term "Head of Agency" means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy and 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 for non-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 advanced 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 non-governmental 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 such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services-
    - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
    - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
  - (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;
  - (7) Any item, combination of items, or service referred to in subparagraphs (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 non-developmental 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 Federal Government as part of an end item or of another component.
- (e) "Non-developmental 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 (e)(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 (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) "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.
- (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 and "FERC" means the Federal Energy Regulatory Commission.

**2. FAR 52.203-3 GRATUITIES (APR 1984)**

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--
- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
  - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this Contract is terminated under paragraph (a) above, the Government is entitled--
- (1) To pursue the same remedies as in a breach of the contract; and

- (2) In addition to any other damages provided by law, to exemplary damages of not less than three nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this Contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**3. FAR 52-203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter

**4. FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

- (a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this Contract or under any follow-on production contract.
- (b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this Contract which exceed \$100,000.

**5. FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**

- (a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime Contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a Prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a Prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--
- (1) Providing or attempting to provide or offering to provide any kickback;
  - (2) Soliciting, accepting, or attempting to accept any kickback; or
  - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a subcontractor to a Prime Contractor or higher tier subcontractor.
- (c)
- (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
  - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
  - (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
  - (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either

case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

- (5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this Contract which exceed \$100,000.

**6. FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may --
  - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
  - (2) Rescind the contract with respect to which --
    - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either --
      - (A) Exchanging the information covered by such subsections for anything of value; or
      - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
    - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the Government rescinds the Contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

**7. FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be --
  - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
  - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.
  - (3) For cost-plus-award-fee contracts --
    - (i) The base fee established in the contract at the time of contract award;
    - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
  - (4) For fixed-price-incentive contracts, the Government may --
    - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
    - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target

profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this Contract for default. The rights and remedies of the government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

**8. FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

(a) Definitions

"Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, U.S.C., including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, U.S.C.
- (3) A special Government employee, as defined in Section 202, Title 18, U.S.C.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of Title 31, U.S.C., among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

- (3) The prohibitions of the Act do not apply under the following conditions:
- (i) Agency and Legislative Liaison by Own Employees.
- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
- (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specially requested by an agency or Congress is permitted at anytime.
- (C) The following agency and legislative liaison activities are permitted at anytime where they are not related to a specific solicitation for any covered Federal action:
- 1 Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
  - 2 Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--
- 1 Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
  - 2 Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
  - 3 Capability presentations by persons seeking awards from an agency pursuant to the provisions of the

Small Business Act, as amended by Pub. L. 95-507,  
and subsequent amendments.

- (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and Technical Services.

- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

1 A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

2 Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an

engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
  - (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
  - (E) The reporting requirements of Federal Acquisition Regulation 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.
- (iii) Disclosure.
- (A) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make

any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

1 A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

2 A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

3 A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(v) Penalties

(A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(vi) Cost Allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

**9. FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989)**

This Contract is subject to the written approval of the DOE Procurement Executive or designee and shall not be binding until so approved.

**10. FAR 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)**

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent post-consumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent post-consumer material standard is 50 percent recovered material content of certain industrial by-products.

**11. FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Non-procurement Programs). The notice must include the following:
  - (1) The name of the subcontractor.
  - (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
  - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
  - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

**12. FAR 52.211-5 MATERIAL REQUIREMENTS (OCT 1997)**

- (a) *Definitions.*

As used in this clause-

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials

and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"Recovered material" means waste materials and by-products that have been recovered or diverted from solid waste including post-consumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

- (b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, as defined in this clause.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.
- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, shall not be used unless the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

**13. FAR 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)**

Any inconsistency in this solicitation or Contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) Representations and other instructions; (c) Contract Clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

**14. FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS  
(DEC 1998)**

- (a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.
- (b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.
- (c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.
- (d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

**15. FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)**

- (a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (c) Definitions. As used in this contract
- (1) "Small business concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto
  - (2) "HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
  - (3) "Small business concern owned and controlled by socially and economically disadvantaged individuals" and "small disadvantaged business concern" means a small business concern that represents, as part of its offer that -
    - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;
    - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
    - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104 (c)(2); and
    - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).
  - (4) "Small business concern owned and controlled by women" means a small business concern --
    - (i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and

- (ii) Whose management and daily business operations are controlled by one or more women.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

**16. FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1999)  
(ALTERNATE II – JAN 1999)**

- (a) This clause does not apply to small business concerns
- (b) *Definitions.* As used in this clause--

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the Offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the Offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

- (c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual contract plan, the plan must

separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a Contract.

- (d) The Offeror's subcontracting plan shall include the following:
- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
  - (2) A statement of--
    - (i) Total dollars planned to be subcontracted for an individual contract plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
    - (ii) Total dollars planned to be subcontracted to small business concerns;
    - (iii) Total dollars planned to be subcontracted to HUBZone small business concerns;
    - (iv) Total dollars planned to be subcontracted to small disadvantaged business concerns;
    - (v) Total dollars planned to be subcontracted to women-owned small business concerns.
  - (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to -
    - (i) Small business concerns;
    - (ii) HUBZone small business concerns;

- (iii) Small disadvantaged business concerns; and
  - (iv) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, HUBZone, small disadvantaged and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with --
- (i) Small business concerns;
  - (ii) HUBZone small business concerns;
  - (iii) Small disadvantaged business concerns; and
  - (iv) Women-owned small business concerns
- (7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the Offeror will make to assure that small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

- (9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the Offeror will--
- (i) Cooperate in any studies or surveys as may be required;
  - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;
  - (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and
  - (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
  - (ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business or women-owned small business concerns.
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating --
    - (A) Whether small business concerns were solicited and, if not, why not;

- (B) Whether HUBZone small business concerns were solicited and, if not, why not;
  - (C) Whether small disadvantaged business concerns were solicited and, if not, why not;
  - (D) Whether women-owned small business concerns were solicited and, if not, why not; and
  - (E) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact --
- (A) Trade associations;
  - (B) Business development organizations; and
  - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.
- (v) Records of internal guidance and encouragement provided to buyers through --
- (A) Workshops, seminars, training, etc.; and
  - (B) Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the Offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business,

HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

- (2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
  - (3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
  - (4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided--
- (1) The master plan has been approved;
  - (2) The Offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
  - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the Offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
- (h) Prior compliance of the Offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the Offeror for award of the contract.

- (i) The failure of the Contractor or subcontractor to comply in good faith with--
  - (1) The clause of this contract entitled "Utilization of Business Concerns;" or
  - (2) An approved plan required by this clause, shall be a material breach of contract.
  
- (j) The Contractor shall submit the following reports:
  - (1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.
  
  - (2) Standard Form 295, Summary Subcontract Report. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

**17. FAR 52.219-16 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN  
(JAN 1999)**

- (a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
  
- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in

accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**18. FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-DISADVANTAGED STATUS AND REPORTING (OCT 1999)**

- (a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business

Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

- (b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

**19. FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

**20. FAR 52.222-3 CONVICT LABOR (AUG 1996)**

The Contractor agrees not to employ in the performance of this Contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this Contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this Contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this Contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a) (1) The worker is paid or is in an approved work training program on a voluntary basis;

- (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
  - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
  - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**21. FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 1995)**

- (a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or

subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Payrolls and basic records.*

- (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of Contract work and shall preserve them for a period of 3 years from the completion of the Contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
- (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) *Subcontracts.*

The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

**22. FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)**

If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**23. FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**24. FAR 52.222-26 EQUAL OPPORTUNITY (FEB 1999)**

- (a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (b) During performance of this contract, the Contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
- (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,
  - (i) employment;
  - (ii) upgrading;
  - (iii) demotion;
  - (iv) transfer;
  - (v) recruitment or recruitment advertising;
  - (vi) layoff or termination;
  - (vii) rates of pay or other forms of compensation; and
  - (viii) selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explains this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules,

regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
  - (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
  - (10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
  - (11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

25. RESERVED

26. RESERVED

27. FAR 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

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

“All employment openings” includes all positions except executive and top management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days’ duration, and part-time employment.

“Appropriate office of the State employment service system” means the local office of the Federal-State national system of public employment offices assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

“Positions that will be filled from within the Contractor’s organization” means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Veteran of the Vietnam era” means a person who --

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge;  
or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) *General.*

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the

individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) employment;
- (ii) upgrading;
- (iii) demotion or transfer;
- (iv) recruitment;
- (v) advertising;
- (vi) layoff or termination;
- (vii) rates of pay or other forms of compensation; and
- (viii) selection for training, including apprenticeship.

- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) *Listing Openings.*

- (1) The Contractor agrees to list all employment openings existing at Contract award or occurring during Contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.
- (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and non-veterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive Orders regulations concerning nondiscrimination in employment.
- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring

location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract clause.

(d) *Applicability.*

This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) *Postings.*

(1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and

(ii) The rights of applicants and employees

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other Contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**28. FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH  
DISABILITIES (JUN 1998)**

(a) *General*

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--
  - (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
  - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

- (b) *Postings.*
- (1) The Contractor agrees to post employment notices stating-
    - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
    - (ii) The rights of applicants and employees
  - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U. S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
  - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**29. FAR 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)**

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-

- (1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and
  - (2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:
- (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or
  - (2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

**30. RESERVED**

**31. FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)**

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The Offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.  
Material

*(If none, insert "None")* Identification No


- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful Offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful Offeror being considered non-responsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations

(including the obtaining of licenses and permits) in connection with hazardous material.

- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
  - (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-
    - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - (ii) Obtain medical treatment for those affected by the material; and
    - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
  - (3) The Government is not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
  - (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
  - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

**32. FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)**

- (a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA, the emergency notice requirements of Section 304 of EPCRA, the list of Material Data Safety Sheets required by Section 311 of EPCRA, the emergency and hazardous chemical inventory forms of Section 312 of EPCRA, and the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA, and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

**33. FAR 52-223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)**

The contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

**34. FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)**

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
- (b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if-
  - (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
  - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

- (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
  - (4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation (FAR); or
  - (5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt-
- (1) The Contractor shall notify the Contracting Officer; and
  - (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall-
    - (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
    - (ii) Continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall-
- (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

- (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

**35. FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

**36. FAR 52.224-2 PRIVACY ACT (APR 1984)**

(a) The Contractor agrees to--

- (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the Contract specifically identifies--

- (i) The system of records; and

- (ii) The design, development, or operation work that the Contractor is to perform.

- (2) Include the Privacy Act notification contained in this Contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and

- (3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this Contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

- (c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
- (2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
- (3) "System of records on individuals," as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**37. FAR 52.225-5 BUY AMERICAN ACT - CONSTRUCTION MATERIALS  
(JUN 1997)**

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

"Components" means those articles, materials, and supplies incorporated directly into construction materials.

"Construction material" means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

"Domestic construction material" means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(2) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

- (b) (1) The Buy American Act (41 U.S.C. 10a-10d) requires that only domestic construction material be used in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
- (2) This requirement does not apply to the excepted construction material or components listed by the Government as follows: None
- (3) Other foreign construction material may be added to the list in paragraph (b)(2) of this clause if the Government determines that:
- (i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than six percent, unless the agency head determines a higher percentage to be appropriate);
  - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
  - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (4) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in paragraph (b)(2) of this clause.
- (c) *Request for determination.*
- (1) Contractors requesting to use foreign construction material under paragraph (b)(3) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs

to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

- (2) If the Government determines after Contract award that an exception to the Buy American Act applies, the Contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(3)(i) of this clause.
- (3) If the Government does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.
- (d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of supplies shall be included in the request:

FOREIGN AND DOMESTIC CONSTRUCTION  
 MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i> Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i> Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

List name, address, telephone number, and contract for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

\*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is used).

**38. FAR 52.225-10 DUTY-FREE ENTRY (APR 1984)**

- (a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for any duties on supplies specifically identified in the Schedule to be accorded duty-free entry.
- (b) Except for supplies listed in the Schedule to be accorded duty-free entry, and except as provided under any other clause of this contract or in paragraph (c) of this clause, the following procedures apply:
  - (1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation into end items to be delivered under this contract. The notice shall be furnished to the Contracting Officer at least 20 days before the importation and shall identify-
    - (i) The foreign supplies;
    - (ii) The estimated amount of duty; and
    - (iii) The country of origin.
  - (2) If the Contracting Officer determines that these supplies should be entered duty-free, the Contracting Officer shall notify the Contractor within 10 days.
  - (3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- (c) Paragraph (b) of this clause shall not apply to purchases of foreign supplies if-
  - (1) They are identical in nature with items purchased by the Contractor or any subcontractor in connection with its commercial business; and
  - (2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.
- (d) The Contractor warrants that all supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated into the end items to be delivered under this contract, and that duty shall be paid to the

extent that these supplies, or any portion of them, are diverted to non-Governmental use, other than as scrap or salvage or as a result of a competitive sale authorized by the Contracting Officer.

- (e) The Government agrees to execute any required duty-free entry certificates for items specified in this contract or approved by the Contracting Officer and to assist the Contractor in obtaining duty-free entry of the supplies.
- (f) All shipping documents covering the supplies to be entered duty-free shall consign the shipments to the contracting agency in care of the Contractor and shall include the delivery address of the Contractor (or contracting agency, if appropriate). The documents shall bear the following information:
  - (1) Government prime contract number.
  - (2) Identification of carrier.
  - (3) The notation:

United States Government, \_\_\_\_\_ [agency] Duty-free entry to be claimed pursuant to Item No(s) \_\_\_\_\_ [from Tariff Schedules], Tariff Schedules of the United States (19 U.S.C. 1202). Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.
  - (4) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).
  - (5) Estimated value in United States dollars.
- (g) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (f) of this clause, to mark all packages with the words "United States Government" and the title of the contracting agency, and to accompany the shipment with at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- (h) The Contractor agrees to notify in writing the cognizant contract administration office immediately upon notification from the Contracting Officer that duty-free entry will be accorded (or, if the duty-free supplies were listed in the contract Schedule, upon award by the Contractor to the overseas supplier). The notice shall identify—

- (1) The foreign supplies;
  - (2) The country of origin;
  - (3) The contract number; and
  - (4) The scheduled delivery date(s)
- (i) The Contractor agrees to insert the substance of this clause in any subcontract under which-
- (1) There will be imported into the customs territory of the United States supplies identified in the Schedule as supplies to be accorded duty-free entry; or
  - (2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

**39. FAR 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES  
(AUG 1998)**

- (a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive Order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea, and Sudan.
- (b) The Contractor shall not acquire for use in the performance of this Contract any supplies or services from entities controlled by the Government of Iraq.
- (b) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

**40. FAR 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995) (ALTERNATE D)  
(APR 1984)**

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Contract or any subcontract at any tier.
- (b) The Contractor agrees to include, and require inclusion of, this clause (FAR 52.227-1, unmodified) suitably modified to identify the parties, in all subcontracts

at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

**41. FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)**

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

**42. FAR 52.227-3 PATENT INDEMNITY (APR 1984)**

- (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by

applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to--

- (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
- (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
- (3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

**43. FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987)**

Except for data contained on pages \_\_\_\_\_, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated \_\_\_\_\_, upon which this contract is based.

**44. FAR 52.229-10 NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (OCT 1988) (As modified by DEAR 970.5204-4 (FEB 1990))**

- (a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this Contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the Contract number.
- (b) (Modified) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this Contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Costs, Base Fee and Performance Fee Clause of this Contract except as provided in paragraph (d) of this clause.

- (c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the United States Department of Energy and the New Mexico Taxation and Revenue Department.
- (d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.
- (e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
- (f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.
- (g) The United States Department of Energy may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the United States Department of Energy, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the United States Department of Energy to represent its Contractor.
- (h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.
- (i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

45. FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)

- (a) Unless the Contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall-
- (1) (*CAS-covered Contracts Only*) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this Contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
  - (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting Contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this Contract and the Disclosure Statement must be amended accordingly. If the Contract price or cost allowance of this Contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
  - (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this Contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
  - (4) (i) Agree to an equitable adjustment as provided in the Changes clause of this Contract if the Contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

- (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
  - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
- (5) Agree to an adjustment of the Contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.
- (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR, Part 9904 or a CAS rule or regulation in 48 CFR, Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
  - (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
  - (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on

price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

**46. FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS  
(NOV 1999)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

- (a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm fixed-price, incentive, cost-plus-fixed fee, etc.) and other Contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
  - (1) For any change in cost accounting practices required to comply with a new or modified CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
  - (2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, Cost Accounting Standards, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
  - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):

- (i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
  - (ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.
- (b) After an ACO determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
- (1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, or subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-5, Cost Accounting Standards - Educational Institutions shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clause in this Contract entitled "Cost Accounting Standards or Cost Accounting Standards - Educational Institutions," which have an award date before the effective date of that standard or cost principle.
  - (2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, Cost Accounting Standards and Cost Accounting Standards - Educational Institutions, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clause at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards - Educational Institutions and FAR 52-230-3, Disclosure and Consistency of Cost Accounting Practices.
  - (3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clause at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.
- (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause at FAR 52.230-2 or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.
- (e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3 or 52.230-5-
  - (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);
  - (2) Include the substance of this clause in all negotiated subcontracts; and
  - (3) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:
    - (i) Subcontractor's name and subcontract number.
    - (ii) Dollar amount and date of award
    - (iii) Name of Contractor making the award
- (f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or prime contract appropriately.
- (g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontract signed Certificate of Current Cost or Pricing Data, whichever is earlier.

**47. FAR 52.232-17 INTEREST (JUN 1996)**

- (a) Except as otherwise provided in this Contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this Contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
  - (1) The date fixed under this contract.
  - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
  - (3) The date the Government transmits to the Contractor proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
  - (4) If this Contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by Contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

**48. FAR 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986)**

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

**49. FAR 52.233-1 DISPUTES (DEC 1998) ALTERNATE I (DEC 1991)**

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
- (2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim
- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer

must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**50. FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996)(ALTERNATE 1)  
(JUN 1985)**

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the "Termination" clause of this contract.

- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if--
  - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage, provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this Contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this Contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertifications, a protest related to this Contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

**51. RESERVED**

**52. FAR 57.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

**53. FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

- (a) The Contractor recognizes that the services under this Contract are vital to the Government and must be continued without interruption and that, upon Contract expiration or termination, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this Contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after Contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**54. FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)**

- (a) Notwithstanding any other clause of this contract--
  - (1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this Contract that have been determined not to be allowable under the Contract terms; and
  - (2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

**55. FAR 52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

**56. FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)**

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this Contract on a noncompetitive basis to its protégés.

**57. FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)**

(a) Definition.

"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract," as used in this clause, 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) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
- (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C 793); and
- (4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

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

**58. FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)**

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

- (a) If the Government is shown as the consignor or the consignees, the annotation shall be: "Transportation is for the \_\_\_\_\_ (name the specific agency) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."
- (b) If the Government is not shown as the consignor or the consignee, the annotation shall be: "Transportation is for the \_\_\_\_\_ (name the specific agency) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement Contract No. \_\_\_\_\_. This may be confirmed by contacting \_\_\_\_\_ (name and address of the contract administration office listed in the contract)."

**59. FAR 52.247-63 PREFERENCE FOR U.S. - FLAG AIR CARRIERS (JAN 1997)**

- (a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.  
  
"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.  
  
"U.S. flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C., Chapter 411.
- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government Contractors and subcontractors use U.S. flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity of foreign flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign flag air carrier if a U.S. flag air carrier is available to provide such services.
- (c) The Contractor agrees, in performing work under this contract, to use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

- (d) In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF  
U.S. FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S. flag air carrier was not available or it was necessary to use foreign flag air carrier service for the following reasons (see Section 47.403 of the Federal Acquisition Regulation): (State reasons):

(End of Statement)

- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this Contract that may involve international air transportation.

**60. FAR 52.247-64 PREFERENCE FOR PRIVATELY-OWNED U.S. FLAG  
COMMERCIAL VESSELS (JUN 1997)**

- (a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are:
- (1) Acquired for a U.S. Government agency account;
  - (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
  - (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
  - (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- (b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this Contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping

any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both

(i) The Contracting Officer and

(ii) The:

Office of Cargo Preference  
Maritime Administration (MAR-590),  
400 Seventh Street SW,  
Washington, DC 20590

Subcontractor bills of lading shall be submitted through the Prime Contractor.

- (2) The Contractor shall furnish these bill of lading copies

(i) within 20 working days of the date of loading for shipments originating in the United States, or

(ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel

(C) Vessel flag of registry

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge

(G) Description of commodity

(H) Gross weight in pounds and cubic feet if available.

- (I) Total ocean freight revenue in U.S. dollars.
- (d) Except for contracts at or below the simplified acquisition threshold, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.
- (e) The requirement in paragraph (a) does not apply to--
  - (1) Contracts at or below the simplified acquisition threshold;
  - (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
  - (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
  - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the: Office of Costs and Rates, Maritime Administration , 400 Seventh Street SW, Washington, DC 20590, Phone: 202-366-4610.

**61. FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (SEP 1996)**

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if—
  - (1) The Contracting Officer determines that a termination is in the Government's interest; or
  - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or

negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
  - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government—
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
    - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
    - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
  - (7) Complete performance of the work not terminated.

- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
  - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
  - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.
  - (3) The reasonable costs of settlement of the work terminated, including—
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
  - (4) A portion of the fee payable under the contract, determined as follows:
    - (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

- (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as supplemented in Subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor—
  - (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
  - (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted-
  - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
  - (2) Any claim which the Government has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

- (m) . (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

**62. FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

**63. FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)**

The Contracting Officer may issue the Contractor an authorization to obtain Interagency Fleet Management System (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of IFMS and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39, and 41 CFR 101-38.301-1.

**64. RESERVED**

**65. FAR 52.253-1 COMPUTER-GENERATED FORMS (JAN 1991)**

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the FAR may be submitted on a computer-generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency-unique form prescribed by an agency supplement to the FAR may be submitted on a computer-generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer-generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

**66. DEAR 952.204-2 SECURITY (SEP 1997) (Modified)**

- (a) Responsibility. It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) Regulations. (Modified) The Contractor agrees to comply with all security regulations and requirements of DOE.
- (c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

- (d) Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and EO 12356.)
- (j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

**67. DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)**

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders).

The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Classifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

**68. DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994)**

- (a) In connection with any activities in the performance of this contract, the contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the contractor by written notice as sensitive foreign nations. The contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the contracting officer if the contractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.
- (b) The provisions of this clause shall be included in any subcontracts

**69. DEAR 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (Deviation) (Acquisition Letter 99-03)(APR 1999)**

- (a) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (b) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.
- (c) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department shall consider proposals made by the contractor to avoid or mitigate foreign influences.
- (d) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as

the contracting officer shall provide in writing to safeguard any classified information or special nuclear material.

- (e) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (e) in all subcontracts under this contract that will require access authorizations for access to classified information or special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed SF328, to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded until the contractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.
- (f) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (g) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the employee security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.
- (h) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

**70. DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)**

- (a) DOE intends to use U.S. Government license tags.
- (b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

**71. DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)**

- (a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
  
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
  - (1) Use of Contractor's Work Product.
    - (i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Contractor's performance of work under this Contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this Contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
    - (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case, the restriction in this subparagraph shall not apply.
    - (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

- (2) Access to and use of information.
- (i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer, it shall not:
    - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
    - (B) compete for the work for the Department based on such information for a period of six (6) months after either the completion of this Contract or until such information is released or otherwise made available to the public, whichever is first;
    - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
    - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
  - (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
  - (iii) The Contractor may use technical data it first produces under this Contract for its private purposes consistent with paragraphs (B)(2)(I) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

- (c) Disclosure after award.
- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the Contract for convenience if it deems such termination to be in the best interest of the Government.
  - (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this Contract for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the Contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.
- (f) Subcontracts.
- (1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms “contract,” “contractor,” and “Contracting Officer” shall be appropriately modified to preserve the Government’s rights.
  - (2) Prior to the award under this Contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of

interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the contractor. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

**72. DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)**

- (a) Notwithstanding any other provisions of the Contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this Contract, the Contractor acquires or proposes to acquire use of real property by:
  - (1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.
  - (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
  - (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

**73. DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)**

Individual occupational radiation exposure records generated in the performance of work under this Contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

**74. DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)**

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public

interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

- (b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the Contracting Officer.

75. **RESERVED**

76. **DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)**

- (a) Definition.

Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its Contract with the Department at the time the particular position is available.

- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**77. DEAR 952.227-9 REFUND OF ROYALTIES (MODIFIED)**

- (a) The contract price includes certain amounts for royalties, payable by the Contractor or subcontractors or both, reported to the Contracting Officer in accordance with the Royalty Information clause.
- (b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or subcontracts, or the copying of such data or data that is copyrighted.
- (c) The Contractor must furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder.
- (d) The Contractor is compensated for any royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. The Contracting Officer must reduce the contract price to the extent any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract. The Contractor agrees to repay or credit the Government accordingly, as the Contracting Officer directs. Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- (e) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor must promptly notify the Contracting Office of that fact and must promptly reimburse the Government in a corresponding amount.
- (f) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (f), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

78. **DEAR 952.227-13 PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT  
(SEP 1997) (AS MODIFIED BY DEAR 970.5204-72)**

(a) Definitions.

"Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

"Patent Counsel," as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

"DOE patent waiver regulations," as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109- 6 or successor regulations. See 10 CFR part 784.

"Agency licensing regulations" and "applicable agency licensing regulations," as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocations of principal rights

(1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations.

(i) The contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of

this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

- (ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.
- (iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.
- (iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government

- (1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:
  - (i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

- (ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that--
- (A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
  - (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
  - (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
  - (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the

Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

- (iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.
  - (v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.
- (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

#### Minimum rights to the Contractor

- (1) The Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
- (2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the

subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

- (3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.
- (4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.
  - (i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:
    - (A) The commercial use that is being made, or is intended to be made, of said invention, and
    - (B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.
  - (ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal

governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

- (iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.
- (iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.
- (v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:
  - (A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

- (B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.
  - (vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.
  - (vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.
- (e) Invention identification, disclosures, and reports.
- (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.
  - (2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the

inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

- (3) The Contractor shall furnish the Contracting Officer the following:
  - (i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.
  - (ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.
- (4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply

with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

- (5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions

- (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--

- (i) Any such inventions are subject inventions;
- (ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;
- (iii) The Contractor and its inventors have complied with the procedures.

- (2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

- (3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (NOTE: This paragraph does not apply to subcontracts).

- (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to--

- (i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.
  - (ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;
  - (iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;
  - (iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or
  - (v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.
- (2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
- (3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.
- (4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.
- (h) Subcontracts.
- (1) The contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or

research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

- (2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor--
  - (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
  - (ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.
- (3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
- (4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.
- (5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.
  - (i) Preference United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that

would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

- (j) Atomic energy.
  - (1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
  - (2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.
  
- (k) Background Patents
  - (1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:
    - (i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
    - (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.
  - (2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.
  - (3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

- (4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:
- (i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or
  - (ii) the Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.
- (l) l) Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.
- (m) m) Forfeiture of rights in unreported subject inventions.
- (1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:
    - (i) Files or causes to be filed a United States or foreign patent application thereon; or
    - (ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.
  - (2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:
    - (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the

decision to Patent Counsel, with a copy to the Contracting Officer;  
or

- (ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or
  - (iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.
- (3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.
- (n) Transfer to successor contractor.
- (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.
  - (2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.
- (o) Facilities License.

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries

regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

**79. DEAR 952.247-70 FOREIGN TRAVEL (FEB 1997)**

- (a) Foreign travel, when charged directly, shall be subject to the prior approval of the Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico, and the United States and its territories and possessions.
- (b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed Soviet-bloc travel.

**80. DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

- (a) *Authority.* This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) *Definitions.* The definitions set out in the Act shall apply to this clause.
- (c) *Financial Protection.* Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d) *Indemnification*
  - (1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE,

DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) Waiver of Defenses.

- (1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
- (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
  - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
  - (iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the Contract activity; or
  - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:

- (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault or persons indemnified, including, but not limited to:
- 1 Negligence;
  - 2 Contributory negligence;
  - 3 Assumption of risk; or
  - 4 Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
- (B) Any issue or defense as to charitable or governmental immunity; and
- (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
- (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
- (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this Contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

- (3) The waivers set forth above:
- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
  - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
  - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
  - (iv) Shall not apply injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
  - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
  - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
  - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
  - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) *Notification and litigation of claims.* The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions of claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the

settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled "Contract Disputes," provided, however, that this clause shall be subject to the clauses entitled "Covenant Against Contingent Fees," to the portion of a clause of this Contract providing specifically for examination of records relating to this Contract by the Comptroller General, and to any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) *Inclusion in subcontracts.* The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under

section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

**81. DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS  
(JUN 1995)**

Consistent with contract-authorized travel requirements, contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount air fares, hotels and motels lodging rates and car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized contracting officer.

- (a) Contracted airlines. Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Property Regulation (FPR), 41 CFR part 301-15, Travel Management Programs. It stipulates that cost-reimbursable contractor employees may obtain discount airfares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, contracting officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the contracting officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR's provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the contractor.
- (b) Hotels/motels. Participating hotels and motels which extend discounts are listed in the FTD, which shows rates, facilities, and identifies by code those which offer reduced rates to cost-reimbursable contractor employees while traveling on official contract business.
- (c) Car rentals. The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms on to cost-reimbursable contractor employees while traveling on official contract business are listed in the FTD.

- (d) Procedures for obtaining service.
- (1) Identification and method of payment requirements for participating Federal contracted airlines are listed in the FTR. Travel discount airfares may be ordered by the issuance of a GTR either directly to the contractor, or to a Schedule Airline Travel Office (SATO) or Federal Travel Management Center (FTMC), provided the letter of identification signed by the cognizant contracting officer accompanies the order. In appropriate instances, such as geographical proximity, contractors may obtain discount air fares through a DOE office or a cooperating local travel agency when either a SATO or FTMC is available. Some airlines allow the purchase of discounted airfares with cash or credit card.
  - (2) In the case of hotel and motel accommodations, reservations may be made by the contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.
  - (3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.

- (e) Standard letter of identification. Contractors shall prepare for the authorizing contracting officer a letter of identification based on the following format:

FORMAT FOR GOVERNMENT CONTRACTORS TO QUALIFY FOR  
TRAVEL DISCOUNTS (TO BE TYPED ON AGENCY OFFICIAL  
LETTERHEAD)

To: (Source of ticketing, accommodations or rental)

Subject: Official Travel of Government Contractor

(Full name of traveler), bearer of this letter, is an employee of (company name) which is under contract to this agency under the Government contract (contract number). During the period of the contract (give dates), the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

(Signature, title and telephone number of the Contracting Officer).

**82. DEAR 970.2701 (DOE-PR 9-9.110) REPORTING OF ROYALTIES**

If any royalty payments are directly involved in the Contract or are reflected in the Contract price to the Government, the Contractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this Contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as shall permit the identification of the patents or other basis on which the royalties are to be paid. The approval of the Department of Energy of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

**83. DEAR 970.2701 (DOE-PR 9-9.106) CLASSIFIED INVENTIONS**

- (a) The Contractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this Contract in any country other than the United States, an application or registration for a patent without obtaining written approval of the Contracting Officer.
- (b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this contract, the subject matter of which is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Contractor shall by separate letter identify by agency and number, the contract or contracts which require security classification markings to be placed on the application.
- (c) The substance of this clause shall be included in subcontracts which cover or are likely to cover classified subject matter.

**84. DEAR 970.5203-3 BUY AMERICAN ACT - SUPPLIES (JAN 1994)**

- (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

*"Components,"* as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

*"Domestic end product,"* as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product

manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"*End products*," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

- (b) The Contractor shall use only domestic end products, except those--
  - (1) For use outside the United States;
  - (2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
  - (3) For which the agency determines that domestic preference would be inconsistent with the public interest: or;
  - (4) For which the agency determines the cost to be unreasonable (see FAR 25.105).

**85. DEAR 970.5204-1(b) COUNTERINTELLIGENCE (SEP 1997)**

- (a) The contractor shall take all reasonable precautions in the work under this Contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- (b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the

aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

**86. DEAR 970.5204-2 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)**

- (a) For the purposes of this clause,
  - (1) Safety encompasses environment, safety, and health, including pollution prevention and waste minimization.
  - (2) Employees include subcontractor employees
- (b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:
  - (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.
  - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

- (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed upon by DOE and the contractor. These agreed upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
- (1) Define the scope of work;
  - (2) Identify and analyze hazards associated with the work;
  - (3) Develop and implement hazard controls;
  - (4) Perform work within controls; and
  - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to

meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the Contract clause entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a Contracting Officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) The contractor is responsible for compliance with the ES&H requirements applicable to this Contract regardless of the performer of the work.
- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may require that the subcontractor submits a Safety Management System for the contractor's review and approval.

**87. DEAR 970.5204-9 ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996)  
(MODIFIED)**

- (a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the

possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause I.121, "Access to and Ownership of Records," at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.
- (d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under 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 this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause I.121, "Access to and Ownership of Records," all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.
- (e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time in such manner as it shall deem appropriate.
- (g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (I) of this clause in all

subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

- (h) Internal audit. The contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the contracting officer.
- (i) Comptroller General.
  - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
  - (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
  - (3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

**88. DEAR 970.5204-11 CHANGES (APR 1984)**

- (a) Changes and Adjustment of Fee. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this Contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties; and the Contract shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at anytime prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

- (b) Work to Continue. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

**89. DEAR 970.5204-12 CONTRACTOR'S ORGANIZATION (JUL 1994)**

- (a) Organization Chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.
- (b) Supervisory Representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site at all times. This also applies to off-site work.
- (c) Control of Employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The Contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in 970.2272, and such standards and procedures shall be subject to the approval of the Contracting Officer.

**90. DEAR 970.5204-13 ALLOWABLE COSTS, BASE FEE AND PERFORMANCE FEE (MANAGEMENT AND OPERATING CONTRACTS) (MAR 1998) (Modified)**

- (a) (Modified) Compensation for Contractor's Services. Payment for the allowable costs as hereinafter defined, and of the base fee amount and performance fee amount, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.
- (b) (Modified) Fee. The fees payable to the Contractor for the performance of the work under this Contract are set forth in Part I, Section B, of the Schedule. There shall be no adjustment in the amount of the Contractor's fee by reason of differences between any estimate of cost for performance of the work under this Contract and the actual cost of performance of that work.
- (c) Allowable Costs. The allowable cost of performing the work under this Contract shall be the costs and expenses that are actually incurred by the contractor in the performance of the Contract work in accordance with its terms, that are necessary or incident thereto; and that are determined to be allowable as set forth in this paragraph. The determination of allowability of cost shall be based on:

- (1) Allowability and reasonableness in accordance with FAR 31.201-2(d) and 31.201-3;
  - (2) Standards promulgated by the Cost Accounting Standards Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances; and
  - (3) Recognition of all exclusions and limitations set forth in this clause or elsewhere in this Contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraphs (d) or (e) of this clause shall not imply either that it is allowable or that it is unallowable.
- (d) Items of Allowable Cost. Subject to the other provisions of this clause, the following items of cost of work done under this Contract shall be allowable to the extent indicated:
- (1) Bonds and insurance, including self-insurance, as provided in the clause entitled "Insurance--Litigation and Claims."
  - (2) Communication costs, including telephone services, local and long-distance calls, telegrams, cablegrams, postage, and similar items
  - (3) Consulting services (including legal and accounting), and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraphs (e)(16) and (e)(25).
  - (4) Reasonable litigation and other legal expenses, including counsel fees, if incurred in accordance with the clause of the Contract entitled "Insurance--Litigation and Claims" and the DOE approved Contractor litigation management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable in this Contract.
  - (5) Losses and expenses (including settlements made with the consent of the Contracting Officer) sustained by the Contractor in the performance of this Contract and certified in writing by the Contracting Officer to be reasonable, except the losses expressly made unallowable under other provisions of this Contract.

- (6) Materials, supplies and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this Contract.
- (7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this Contract or as approved by the Contracting Officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any "Patent Rights" clause of this Contract.
- (8) (Modified) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that personnel appendix sets forth in detail personnel costs and related expenses to be allowable under this Contract and is intended to document those personnel policies, practices, and plans which have been found acceptable by the Contracting Officer. It is further understood and agreed that the Contractor will advise DOE of any proposed changes in any matters covered by said polices, practices or plans which relate to this item of cost, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the Contractor and DOE without execution of an amendment to this Contract for the purpose of effectuating agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters (Reimbursement Authorizations) from the Contracting Officer or his representative. Types of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:
  - (i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; non-work time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees, provided, however, that the Contracting Officer's approval is required in each instance of total compensation to an individual employee at an annual rate of \$225,000 (see 970.3102-2) or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;

- (ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and worker's compensation plans, (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);
- (iii) Travel (except foreign travel, which requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of Contractor employees, in connection with performance of work under this Contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);
- (iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications; and wellness/fitness centers;
- (v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis); including apprenticeship training programs designed to improve efficiency and productivity of Contract operations, to develop needed skills, and to develop scientific and technical personal in specialized fields required in the Contract work;
- (vi) Recruitment of personnel (including help-wanted advertisement), including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the Contractor for employment interviews; and
- (vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the Contract.
- (viii) Compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Procurement Policy. Costs of executive

compensation shall be determined pursuant to Federal Acquisition Regulation 31.205-6(p).

- (9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent approved by the Contracting Officer and as allowable under paragraph (f) of the clause of this Contract entitled "Property."
  - (10) Subcontracts and purchase orders, including procurements from Contractor-controlled sources, subject to approvals required by other provisions of this Contract.
  - (11) Subscriptions to trade, business, technical, and professional periodicals, as approved by the Contracting Officer.
  - (12) Taxes, fees, and charges levied by public agencies which the contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this Contract.
  - (13) Utility services, including electricity, gas, water and sewerage.
  - (14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with Federal Acquisition Regulation (FAR) 31.205-6(j)(3)(iv).
  - (15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and pay-masters. If payments are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the Contracting Officer.
- (e) Items of Unallowable Costs. The following items of costs are unallowable under this Contract to the extent indicated:
- (1) Advertising and public relations costs designed to promote the Contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, and the cost of memberships in civic or community organizations, except those advertising and public relations costs (i) specifically required by the contract, (ii) approved in advance by the Contracting Officer as clearly in furtherance of work performed under the contract, (iii) that arise from requirements of the Contract and that are exclusively for recruiting personnel, acquiring scarce items for Contract

performance, disposing of scrap or surplus materials, or the transfer of Federally-owned or originated technology to State and local governments and to the private sector, acquisition of contract-required supplies and services, or (iv) where the primary purpose of the activity is to facilitate Contract performance in support of the DOE mission.

- (2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the Contractor.
- (3) Proposal expenses and costs of proposals
- (4) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the Contractor and employee prior to the rendering of the services or an established plan consistently followed by the Contractor or (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.
- (5) Central and branch office expenses of the Contractor, except as specifically set forth in the Contract.
- (6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government Contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the Contractor for the purpose of obtaining Government business.
- (7) Contingency reserves, provisions for.
- (8) Contributions and donations, including cash, Contractor-owned property and services, regardless of the recipient.
- (9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method), or sum-of-the-years-digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.
- (10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.

- (11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization.
- (12) Fines and penalties, except, with respect to civil fines and penalties only, if the contractor demonstrates to the Contracting Officer that--
  - (i) Such a civil fine or penalty was incurred as a result of compliance with specific terms and conditions of the Contract or written instructions from the Contracting Officer; or
  - (ii) Such a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care.
- (13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the Contractor from others.
- (14) Insurance (including any provision of a self-insurance reserve) on any person where the Contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government Property as defined in the Contract clause entitled "Property."
- (15) Interest, however represented (except (i) Interest incurred in compliance with the Contract clause entitled "State and Local Taxes" or, (ii) imputed interest costs relating to leases classified and accounted for as capital leases under Generally Accepted Accounting Principles (GAAP), provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purposes), bond discounts and expenses, and costs of financing and refinancing operations.
- (16) Legal, accounting, and consulting services and related costs incurred in connection with the preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent infringement litigation (except where incurred pursuant to the Contractor's performance of the Government-funded technology transfer mission, and in accordance with the Litigation and Claims Clause).

- (17) Losses or expenses:
- (i) On, or arising from the sale, exchange, or abandonment of capital assets, including investments;
  - (ii) On other contracts, including the contractor's contributed portion under cost-sharing contracts;
  - (iii) In connection with price reductions to and discount purchases by employees and others from any source;
  - (iv) That are compensated for by insurance or otherwise or which would have been compensated for by insurance required by law or by written direction of the Contracting Officer but which the contractor failed to procure or maintain through its own fault or negligence;
  - (v) That result from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as that term is defined in the clause of this Contract entitled "Property");
  - (vi) That represent liabilities to third persons that are not allowable under the clause of this Contract entitled "Insurance -- Litigation and Claims"; or
  - (vii) That represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this Contract.
- (18) Membership in trade, business, and professional organizations, except as approved by the Contracting Officer.
- (19) Pre-contract costs, except as expressly made allowable under other provisions in this Contract.
- (20) Research and development costs, unless specifically provided for elsewhere in this Contract.
- (21) Selling cost, except to the extent they are determined to be reasonable and to be allocable to the Contract. Allocability of selling costs to the Contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the Contractor's product for agency use.

- (22) Storage of records pertaining to this Contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.
- (23) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including the listing of securities on exchanges, taxes which are paid contrary to the clause entitled "State and Local Taxes," federal taxes on net income and excess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to Section 4971 or Section 4975 of the Internal Revenue Code of 1954, as amended, respectively.
- (24) Travel expenses of the officers, proprietors, executives, administrative heads, and other employees of the Contractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the Contractor's business as a whole, except to the extent that particular travel is in connection with the Contract and approved by the Contracting Officer.
- (25) Salary or other compensation (and expenses related thereto) of any individual employed under this Contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this Contract or procedures of DOE applicable to the borrowing of such an individual from another cost-type contractor.
- (26) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this Contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations: require circuitous routing; require travel during unreasonable hours; excessively prolonged travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. Individual Contractor determinations of non-availability of discount airfare or Government contract airfare will not be contested by DOE when the Contractor can reasonably demonstrate such non-availability or, on an overall basis, that established policies and

procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the Contractor must justify and document the applicable condition(s) set forth above.

- (27) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this Contract.
- (28) Late premium payment charges related to employee deferred compensation plan insurance.
- (29) Facilities capital cost of money (CAS-414 and CAS-417)
- (30) Contractor costs incurred to influence either directly or indirectly - (i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or (ii) Federal, State, or executive body of a political subdivision of a State action on regulatory and Contract matters as described in the clause of this Contract entitled "Political Activity Cost Prohibition," incorporated elsewhere in this Contract.
- (31) Commercial automobile rental expenses unless approved by the Contracting Officer.
- (32) Costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government or a State, local or foreign government, as provided in the clause entitled "Cost Prohibitions Related to Legal and Other Proceedings" incorporated elsewhere in this Contract.
- (33) Costs of alcoholic beverages.
- (34) Contractor employee travel costs incurred for lodging, meals, and incidental expenses which exceed on a daily basis the applicable maximum per diem rates provided for in effect for Federal Civilian Employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the Contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the Contractor and shall not exceed the higher amounts that may be authorized for Federal Civilian employees in a similar situation.

- (35) Notwithstanding any other provision of this Contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor and/or subcontractor against otherwise unallowable costs, unless such insurance or bond is required by law, the express terms of this contract, or is authorized in writing by the Contracting Officer. The cost of commercial insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship is an unallowable cost.
- (36) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.
- (37) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

**91. DEAR 970.5204-15 OBLIGATION OF FUNDS (APR 1994) (MODIFIED)**

- (a) Obligation of Funds. The amount presently obligated by the Government with respect to this contract is set forth in Section B-4 of this Contract. Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, 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. Nothing in this paragraph is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.
- (b) Limitation on Payment by the Government. Except as otherwise provided in this Contract and except for costs which may be incurred by the Contractor pursuant to the clause entitled "Termination," or costs of claims allowable under the Contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the Contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this Contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the Contractor's fee. Unless expressly

negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this Contract shall be subject to the availability of

- (1) collections accruing to the contractor in connection with the work under this contract and 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
  - (2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.
- (c) Notices--Contractor Excused from Further Performance. The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the 90-day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only 90 days and to cover the contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the clause entitled "Termination."
- (d) Financial Plans; Cost and Encumbrance Limitations. In addition to the limitations provided for elsewhere in this Contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the Contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the Contract work. Such plans and instructions may be amended or supplemented from time to time by DOE. The Contractor hereby agrees
- (1) to comply with the specific limitations (ceilings) on costs and commitments set forth in such plans and directives,

- (2) to use its best efforts to comply with other requirements of such plans and directives, and
- (3) to promptly notify DOE in writing, whenever it has reason to believe the authorized financial levels of costs and commitments will be exceeded or substantially underrun.
- (e) Government's Right to Terminate not Affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the Contract under the provisions of the article entitled "Termination."

**92. DEAR 970.5204-16 PAYMENTS AND ADVANCES (JUN 1997) (MODIFIED)**

- (a) *Payment of Base Fee and Award Fee.* The base fee, if any, is payable in equal monthly installments. Award fee pool amounts earned are payable following the issuance by the FDO of a Determination of Award Fee Pool Amount Earned, in accordance with the clause of this contract entitled, *Total Available Fee: Base Fee Amount and Performance Fee Amount.* Base fee and award fee pool 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 or award fee pool amount earned payment may be withdrawn against the payments cleared financing arrangement without 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 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 therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefor 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 Section J, Attachment E. 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 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) *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.
- (f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs 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 I.99, DEAR 970.5204-31, "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..
- (g) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (h) *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.
- (i) *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.
- (j) *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 therefor.

**93. DEAR 970.5204-17 POLITICAL ACTIVITY COST PROHIBITION  
(MAR 1998)**

- (a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:

- (1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;
  - (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
  - (3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;
  - (4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or
  - (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.
  - (6) Contractor costs incurred to influence (directly or indirectly) Federal, State, or local executive branch action on regulatory and Contract matters
- (b) Costs of the following activities are excepted from the coverage of paragraph (a) of this clause; provided that the resultant Contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:
- (1) Providing Members of Congress, their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous) from members of Congress, their staff members, or staff of cognizant legislative committees, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance

of the Contract or proposed legislation. In providing this information or expert advice, the Contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by Contractor employees for the purpose of providing such information or expert advice shall also be reimbursable, provided the request for such information or expert advice is a prior written request signed by a Member of Congress, and provided such costs also comply with the allowable cost provisions of the Contract.

- (2) Providing State legislatures or subdivisions thereof, their staff members, or staff of cognizant legislative committees, in response to a prior written request from a State legislator, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the Contract or proposed legislation. In providing this information or expert advice, the Contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by Contractor employees shall be reimbursable, provided such costs also comply with the allowable costs provision of the Contract.
  - (3) Any lobbying made unallowable under paragraph (a)(3) above to influence State legislation in order to directly reduce Contract cost, or to avoid material impairment of the Contractor's authority to perform the Contract if authorized by the Contracting Officer.
  - (4) Any activity specifically authorized by statute to be undertaken with funds from the contract.
- (c) Unallowable lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable costs in DOE's system of accounts.
  - (d) The Contractor's annual certification, submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditures Accrued required under the clause titled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the Contractor's certification that the requirements and standards of this clause have been complied with.
  - (e) The Contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.
  - (f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when (1) An

employee engages in legislative liaison activities (as delineated in paragraphs (a) and (b) of this clause) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the Contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs. When conditions (f)(1) and (2) of this clause are met, the Contractor is not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (f)(1) or (2) of this clause are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of legislative liaison activity time spent by employees during any calendar month.

- (g) During Contract performance, the Contractor should resolve, in advance, any significant questions or disagreements between the Contractor and DOE concerning compliance with this clause.
- (h) In providing information or expert advice under paragraphs (b)(1) and (b)(2) of this Clause, the Contractor shall advise the Contracting Officer in advance or as soon as practicable.

**94 DEAR 970.5204-19 PRINTING (APR 1984)**

- (a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this Contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) In all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Contractor shall include a provision substantially the same as this clause.

**95. DEAR 970.5204-20 MANAGEMENT CONTROLS (AUG 1993) (MODIFIED)**

- (a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.
- (b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

96. **DEAR 970.5204-21 PROPERTY (JUN 1997)**

- (a) Furnishing of Government Property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) Title to Property. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under

this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

- (c) Identification. To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.
- (d) Disposition. The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this Contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of cost allowable under this Contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government property which had come into the possession or custody of the Contractor under this contract.
- (e) Protection of government property--management of high-risk property and classified materials.
  - (1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.
  - (2) In addition, the contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for

property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

- (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
- (f) Risk of loss of Government property.
- (1) (i) The contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
    - (A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;
    - (B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or
    - (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.
  - (ii) If, after an initial review of the facts, the Contracting Officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government for the loss, destruction, or damage.
- (2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:

- (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.
  - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.
- (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.
- (g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:
  - (1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,
  - (2) Shall take all reasonable steps to protect the property remaining, and
  - (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.
- (h) Government Property for Government Use Only. Government property shall be used only for the performance of this contract.

- (i) Property Management.
  - (1) Property Management System.
    - (i) The contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.
    - (ii) In order for a property management system to be approved, it must provide for:
      - (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
      - (B) Employee personal responsibility and accountability for Government-owned property;
      - (C) Full integration with the contractor's other administrative and financial systems; and
      - (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
    - (iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.
  - (2) Property Inventory.
    - (i) Unless otherwise directed by the Contracting Officer, the contractor shall within six months after execution of the Contract provide a baseline inventory covering all items of Government property.

- (ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- (j) The term "contractor's managerial personnel" as used in this clause means the Contractor's directors, officers, and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:
  - (1) All or substantially all of the contractor's business; or
  - (2) All or substantially all of the contractor's operations at any one facility or separate location to which this Contract is being performed; or
  - (3) A separate and complete major industrial operation in connection with the performance of this contract; or
  - (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
  - (5) A separate and discrete major task or operation in connection with the performance of this contract.
- (k) The Contractor shall include this clause in cost reimbursable subcontracts.

**97. DEAR 970.5204-22 CONTRACTOR PURCHASING SYSTEM (NOV 1997)  
(MODIFIED)**

- (a) **General.** The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.7102. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and

shall use such special and directed sources as may be expressly required by the DOE contracting officer. DOE will conduct periodic appraisals of the contractor's management of all facets of the purchasing function, including the contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the contracting officer, through the contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (x) of this clause.

- (b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.
- (c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR Subpart 917.74.
- (d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR 970.7109.

(e) *Audit of Subcontractors.*

- (1) The contractor shall provide for:
  - (i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and
  - (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.
- (2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.
- (3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability

or unallowability of subcontractor costs claimed for reimbursement by the contractor.

- (4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.7105 and 48 CFR 970.3102-15(b).

(f) *Bonds and Insurance.*

- (1) The contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of \$100,000. The contractor shall consider the use of performance bonds in fixed price non-construction subcontracts, where appropriate.
- (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).
- (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than \$25,000, but not greater than \$100,000, the contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.
- (4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

- (g) *Buy American.* The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-3 and 48 CFR 52.225-5. The contractor shall forward determinations of non-availability of individual items to the DOE contracting officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor

has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of non-availability for individual items valued at \$100,000 or less.

- (h) *Construction and Architect-Engineer Subcontracts.*
- (1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
  - (2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."
  - (3) *Prevention of Conflict of Interest.*
    - (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
    - (ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
    - (iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.
- (i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.7105.
- (j) *Contractor-Subcontractor Relationship.* The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

- (k) *Government Property.* Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR 101, the DOE Property Management Regulations 41 CFR 109, and their contracts.
- (l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.
- (m) *Leasing of Motor Vehicles.* Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.
- (n) *Make-or-Buy Plans.* Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the "Make-or-Buy Plan" clause of this contract and the contractor's approved make-or-buy plan.
- (o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
- (p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.
- (q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR 908.71 and the Federal Property Management Regulations, 41 CFR 101:
  - (1) Motor vehicles--48 CFR 908.7101
  - (2) Aircraft--48 CFR 908.7102
  - (3) Security Cabinets--48 CFR 908.7106
  - (4) Alcohol--48 CFR 908.7107
  - (5) Helium--48 CFR 908.7108
  - (6) Fuels and packaged petroleum products--48 CFR 908.7109
  - (7) Coal--48 CFR 908.7110
  - (8) Arms and Ammunition--48 CFR 908.7111
  - (9) Heavy Water--48 CFR 908.7121(a)
  - (10) Precious Metals--48 CFR 908.7121(b)
  - (11) Lithium--48 CFR 908.7121(c)
  - (12) Products and services of the blind and severely handicapped--41 CFR 101-26.701

- (13) Products made in Federal penal and correctional institutions--41 CFR 101-26.702
- (r) *Purchase vs. Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:
- (1) at time of original acquisition;
  - (2) when lease renewals are being considered; and
  - (3) at other times as circumstances warrant.
- (s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.
- (t) *Setoff of Assigned Subcontractor Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.
- (u) *Strategic and Critical Materials.* The contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR Subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR Subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.
- (w) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.
- (x) *Subcontract Flowdown Requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the contractor shall include the following clauses in subcontracts, as applicable:

- (1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
- (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
- (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
- (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2903.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.15406-2(b)

**98. DEAR 970.5204-23 STATE AND LOCAL TAXES (APR 1984)**

- (a) The Contractor agrees to notify the Contracting Officer of any State or local tax, fee or charge levied or purported to be levied on or collected from the Contractor with respect to the Contract work, any transaction thereunder, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Contracting Officer has advised the Contractor, is or may be inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the Contracting Officer or on the basis of advice from the Contracting Officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
- (b) The Contractor agrees to take such action as may be required or approved by the Contracting Officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Contracting Officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Contractor. If the Contracting Officer directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the Contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the Contractor.

- (c) The Government shall hold the Contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

**99. DEAR 970.5204-27(b) CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES (MAY 1989)**

The Contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with the Department of Energy (DOE)) on the Contract work to disclose to the Contractor all consultant or other comparable employment services which the employees propose to undertake for others. The Contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The Contractor will require any employee who will be employed full-time on the Contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE Contractor in the same or related energy field or another organization except with the prior approval of the Contractor. If the Contractor believes, with respect to any employee who is employed full-time on the Contract work, that any proposed consultant or other comparable employment service may involve: (1) a rate of remuneration significantly in excess of the employee's regular rate of remuneration; (2) a significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE's Contractors; (3) the Contractor's responsibility to report fully and promptly to DOE all significant research and development information; or (4) the patent provisions of the Contractor's Contract with DOE, the Contractor shall obtain the prior approval of the Contracting Officer for such consultant or other comparable employment service.

**100. DEAR 970.5204-29 PERMITS OR LICENSES (APR 1984)**

Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this Contract is performed.

**101. DEAR 970.5204-31 INSURANCE – LITIGATION AND CLAIMS (JUN 1997)  
(MODIFIED)**

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (c)
  - (1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
  - (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
  - (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.
- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.
- (e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed –

- (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
  - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, "Obligation of Funds."
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements) --
- (1) Which are otherwise unallowable by law or the provisions of this contract; or
  - (2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.
- (h) In addition to the cost reimbursement limitations contained in DEAR 970.3102, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's --
- (1) Willful misconduct,
  - (2) Lack of good faith, or
  - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the

contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

- (j)
  - (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.
  - (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
  - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
  - (4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5204-21.
- (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall –
  - (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
  - (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
  - (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the

Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

**102. DEAR 970.5204-33(a) PRIORITIES AND ALLOCATIONS (APR 1994)**

The Contractor shall follow the rules and procedures of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed for Contract performance.

**103. DEAR 970.5204-38 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (APR 1994).**

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

**104. DEAR 970.5204-39 ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (OCT 1995) DEVIATION (JUN 1999)**

- (a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:
- (1) Executive Order 13101 of June 3, 1999, entitled "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition."
  - (2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. 94-580, 90 Stat. 2822),
  - (3) Title 40 of the Code of Federal Regulations, Subchapter I, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials,

- (4) "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials" and related guidance document(s), as they are identified in writing by the Department.
- (b) The Contractor shall prepare and submit report on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction (e.g., in a specified format) from the Contracting Officer.
- (c) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, who shall be identified by the Contracting Officer. Reports required pursuant to paragraph (b) of this clause, shall be submitted through the DOE recycling point of contact.

**105. DEAR 970.5204-42 KEY PERSONNEL (APR 1984)**

It having been determined that the employees whose names appear in Section J, Attachment F, are necessary for the successful performance of this contract, the Contractor agrees to assign such employees to fill these positions as are satisfactory to the Contracting Officer. Once assigned, the Contractor agrees not to reassign or remove any such employees without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned employees is to be reassigned, removed, or transferred, or is otherwise unavailable for continuing assignment, the Contractor shall, with the approval of the Contracting Officer, replace such employee with an employee of substantially equal abilities and qualifications.

**106. DEAR 970.5204-54 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (APR 1999) ALTERNATE II (APR 1999)**

- (a) *Total available fee.* Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled "Payments and Advances."
- (b) *Fee Negotiations.* Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Procurement Executive, or designee, the Contracting Officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The Contracting Officer shall modify this contract at the conclusion of each

negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the Contracting Officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Procurement Executive, or designee.

- (c) *Determination of Total Available Fee Amount Earned.*
- (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the Contracting Officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.
  - (2) The DOE Operations/Field Office Manager, or designee, will be the Fee Determination Official. The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.
  - (3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.
  - (4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (d) *Performance Evaluation and Measurement Plan(s).* To the extent not set forth elsewhere in the contract:

- (1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:
  - (i) Prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or
  - (ii) Not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the Contracting Officer.
- (2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.
- (3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The Contracting Officer shall notify the contractor:
  - (i) Of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;
  - (ii) Of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or
  - (iii) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.
- (e) *Schedule for total available fee amount earned determinations.* The DOE Operations/Field Office Manager, or designee, shall issue the final total available

fee amount earned determination in accordance with the schedule set forth in the Performance Evaluation and Measurement Plan(s). However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self- assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

**107. DEAR 970.5204-58 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (AUG 1992)**

- (a) Program implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of Contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) Subcontracts.
  - (1) The Contractor agrees to notify the Contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR Part 707.

- (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR Part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR Part 707.
- (3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR Part 707.

**108. DEAR 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999)**

- (a) The contractor shall comply with the requirements of the "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.

**109. DEAR 970.5204-60 FACILITIES MANAGEMENT (NOV 1997)**

Copies of DOE Directives referenced herein are available from the Contracting Officer.

- (a) *Site Development Planning.* The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.
- (b) *General Design Criteria.* The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract

are specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) above. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

- (c) *Energy Management.* The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.
- (d) *Subcontract Requirements.* To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

**110. DEAR 970.5204-61 COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS (JUN 1997)**

(a) Definitions

*Convictions*, as used herein, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

*Costs*, include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers and directors; and any similar costs incurred before, during, and after commencement of a proceeding which bears a direct relationship to the proceeding.

*Fraud*, as used herein, means--

- (1) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents;
- (2) Acts which constitute a cause for debarment or suspension under FAR 9.406-(2)(a) and FAR 9.407-(2)(a); and
- (3) Acts which violate the False Claims Act, 31 U.S.C. 3729-3731, or the Anti-kickback Act, 41 U.S.C. 51 and 54.

*Penalty*, does not include restitution, reimbursement, or compensatory damages.

*Proceeding*, includes an investigation.

- (b) Except as otherwise described in this section, costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, or costs incurred in connection with any criminal, civil or administrative proceeding by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding relates to a violation of, or failure to comply with a Federal, State, local or foreign statute or regulation by the contractor, and results in any of the following dispositions:
  - (1) In a criminal proceeding, conviction
  - (2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability.
  - (3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.
  - (4) A final decision by an appropriate Federal official to debar or suspend the contractor, to rescind or void a contract, or to terminate a contract for default by reason of a violation of or failure to comply with a law or regulation.
  - (5) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1), (2), and (3) or (4) of this section.
  - (6) Not covered by paragraphs (b)(1) through (5) of this section, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (5) of this section.

- (c) (1) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the contractor and the Federal Government, then the costs incurred by the contractor in connection with such proceeding that are otherwise unallowable under paragraph (b) of this section may be allowed to the extent specifically provided in such agreement.
- (2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the Contracting Officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.
- (d) If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign government, the Contracting Officer may allow the costs incurred in such proceeding, provided the Procurement Executive determines that the costs were incurred as a result of compliance with a specific term or condition of the contract, or specific written direction of the Contracting Officer.
- (e) Costs incurred in connection with a proceeding described in paragraph (b) of this section, but which are not made unallowable by that paragraph, may be allowed by the Contracting Officer only to the extent that:
  - (1) The total costs incurred are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;
  - (2) Payment of the costs incurred, as allowable and allocable Contract costs, is not prohibited by any other provision(s) of this contract.
  - (3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and
  - (4) The amount of costs allowed does not exceed 80 percent of the total costs incurred and otherwise allowable under the contract. Such amount that may be allowed (up to the 80 percent limit) shall not exceed the percentage determined by the Contracting Officer to be appropriate, considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. The

amount of reimbursement allowed for legal costs in connection with any proceeding described in subparagraph (c)(2) shall be the amount determined to be reasonable by the Contracting Officer but shall not exceed 80 percent of otherwise allowable costs incurred. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied.

- (f) Contractor costs incurred in connection with the defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988, including the cost of all relief necessary to make such employee whole, where the contractor was found liable or settled, are unallowable.
- (g) Costs which may be unallowable under this clause, including directly associated costs, shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Contracting Officer shall generally withhold payment and not authorize the use of funds advanced under the Contract for the payment of such costs. However, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

**111. DEAR 970.5204-63 COLLECTIVE BARGAINING AGREEMENTS -  
MANAGEMENT AND OPERATING CONTRACTS (AUG 1993)**

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the Contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The Contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

**112. RESERVED**

**113. DEAR 970.5204-75 PREEXISTING CONDITIONS (JUN 1997) ALTERNATE II (JUN 1997)**

- (a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on February 1, 2001. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to February 1, 2001, the contractor shall be responsible in accordance with the terms and conditions of this contract.
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.
- (c) The contractor has the duty to inspect the facilities and sites and timely identify to the contracting officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The contractor has the responsibility to take corrective action, as directed by the contracting officer and as required elsewhere in this contract.

**114. DEAR 970-5204-76 MAKE-OR-BUY PLAN (JUN 1997)**

- (a) Definitions.

*Buy item* means a work activity, supply, or service to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor.

*Make item* means a work activity, supply, or service to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site.

*Make-or-buy plan* means a contractor's written program for the Contract that identifies work efforts or requirements that either are "make items" or "buy items."

- (b) *Make-or-buy plan.* The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the Contract or otherwise provided by the Contracting Officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:
- (1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.
  - (2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such actions.
- (c) *Submission and approval.* For new contract awards, the Contractor shall submit an initial make-or-buy plan, for approval, within 180 days after contract award. If the existing Contract is to be extended, the contractor shall submit a make-or-buy plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:
- (1) A description of the each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;
  - (2) The categorization of each work item as “must make,” “must buy,” or “can make or buy,” with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as “must make,” a cost/benefit analysis must be performed for each item if:
    - (i) The contractor is not the least-cost performer, and
    - (ii) A program specific make-or-buy criterion does not otherwise justify a “must make” categorization;
  - (3) A decision to either “make” or “buy” in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as “can make or buy”;

- (4) Identification of potential suppliers and subcontractors, if known, and their location and size status;
  - (5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;
  - (6) A description of the impact of a change in current practice of making or buying on the existing work force; and
  - (7) Any additional information appropriate to support and explain the plan.
- (d) *Conduct of operations.* Once a make-or-buy plan is approved, the contractor shall perform in accordance with the plan.
- (e) *Changes to the make-or-buy plan.* The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:
- (1) A lesser period is provided either for the total plan or for individual items or work effort;
  - (2) The circumstances supporting the make-or-buy decisions change, or
  - (3) New work is identified.

At least annually, the contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. Changes shall be submitted in accordance with the instructions provided by the Contracting Officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the contractor's receipt of the Contracting Officer's written approval.

**115. DEAR 970-5204-77 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (JUN 1997)**

- (a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the

facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts

- (b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to the Contract clause entitled "Definitions," expected to exceed \$500,000.

**116. DEAR 970.5204-78 LAWS, REGULATIONS, AND DOE DIRECTIVES  
(JUN 1997)**

- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (List B) may be appended to this Contract for information purposes. Omission of any applicable law or regulation from List B does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
- (b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (Section J, Attachment H) appended to this contract. Except as otherwise provided for in paragraph (c) of this clause, the Contracting Officer may, from time to time and at any time, revise Section J, Attachment H, by unilateral modification to the Contract to add, modify, or delete specific requirements. Prior to revising Section J, Attachment H, the Contracting Officer shall notify the contractor in writing of the Department's intent to revise Section J, Attachment H, and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on Contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the contractor shall advise the Contracting Officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the Contracting Officer shall decide whether to revise Section J, Attachment H, and so advise the contractor not later than 30 days prior to the effective date of the revision of Section J, Attachment H. The contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other Contract terms and conditions, including cost and schedule, associated with the revision of Section J, Attachment H, pursuant to the clause entitled "Changes," of this Contract.
- (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this Contract may be determined by a DOE-approved process to evaluate the work and the associated hazards and identify an appropriately tailored

set of standards, practices, and controls, such as a tailoring process included in a DOE-approved Safety Management System implemented under the Contract clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored ES&H requirements, as approved by DOE pursuant to the process, shall be incorporated into Section J, Attachment H, as Contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the Contract by Section J, Attachment H. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

- (d) The contractor is responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. The contractor is responsible for flowing down the necessary provisions to subcontracts at any tier to which the contractor determines such requirements apply.

**117. DEAR 970.5204-79 ACCESS TO AND OWNERSHIP OF RECORDS (JUN 1997)  
(MODIFIED)**

- (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 process 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 workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), and non-employee patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of 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 970.5204-9, Accounts, Records, and Inspection, are described as the property of the Government; and
  - (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 970.5204-2, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

**118. DEAR 970.5204-80 OVERTIME MANAGEMENT (JUN 1997)**

- (a) The contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.
- (b) The contractor shall notify the Contracting Officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.
- (c) The Contracting Officer may require the submission, for approval, of a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the Contracting Officer

otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:

- (1) An overtime premium fund (maximum dollar amount);
- (2) Specific controls for casual overtime for non-exempt employees;
- (3) Specific parameters for allowability of exempt overtime;
- (4) An evaluation of alternatives to the use of overtime; and
- (5) Submission of a semi-annual report that includes for exempt and non-exempt employees:
  - (i) Total cost of overtime;
  - (ii) Total cost of straight time;
  - (iii) Overtime cost as a percentage of straight-time cost;
  - (iv) Total overtime hours;
  - (v) Total straight-time hours; and
  - (vi) Overtime hours as a percentage of straight-time hours.

**119. DEAR 970.5204-81 DIVERSITY PLAN (DEC 1997)**

The contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this contract. The Contractor shall submit an update to its Plan with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in Section J, Attachment I. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, and (5) economic development (including technology transfer).

120. DEAR 970.5204-82 RIGHTS IN DATA - FACILITIES (FEB 1998)

(a) Definitions

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means
  - (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and
  - (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.
- (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.
- (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include

manuals and instructional materials and technical data formatted as a computer data base.

- (7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have:

- (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
- (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;
- (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
- (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract 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 this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or

paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

- (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and
- (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

- (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

- (2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the technical data or computer software prior to its delivery.
- (d) Subcontracting.
- (1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) Subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at FAR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at DEAR 970.5204-82 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
  - (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

- (i) Promptly submit written notice to the Contracting Officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
  - (ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.
- (e) **Rights in Limited Rights Data.** Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

#### Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. \_\_\_\_\_ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in

connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

END OF NOTICE

(f) Rights in Restricted Computer Software

- (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy Contract No. \_\_\_\_\_. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
  - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any

Government installation to which such computer or computers may be transferred;

- (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
  - (3) Reproduced for safekeeping (archives) or backup purposes;
  - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
  - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

END OF NOTICE

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice--Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. \_\_\_\_\_ with (name of Contractor).

END OF NOTICE

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr),

in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

- (g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

**121. DEAR 970.5204-85 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 1997)**

- (a) The Contracting Officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Secretary that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.
- (b) The Contractor shall be afforded a reasonable opportunity to respond in writing

**122. DEAR 970.5204-86 CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES (APR 1999) ALTERNATE I (APR 1999)**

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause and if Alternate I is applicable (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations/Field Office Manager or designee may make a unilateral determination to reduce the evaluation period's otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

- (a) Minimum requirements for Environment, Safety & Health's Program. The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety and Health into Work Planning and

Execution," if included in the contract, or as otherwise agreed to with the Contracting Officer. The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned.

- (b) Minimum requirements for catastrophic event. If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the DOE Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.
- (c) Minimum requirements for specified level of performance
  - (1) At a minimum the Contractor must perform the following:
    - (i) The requirements with specific incentives at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimal level of performance has been established in the specific incentive;
    - (ii) All of the performance requirements directly related to requirements specifically incentivized at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
    - (iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.
  - (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Contracting Officer. To the extent that the Contractor fails to achieve the minimum performance levels

specified in the Statement of Work, Work Authorization Directive, or similar document, during the evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25 percent of the total available fee amount. Such 25 percent shall include base fee, if any.

- (d) Minimum requirements for cost performance.
  - (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
  - (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
  - (3) The Contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the Contracting Officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/ Field Office Manager, or designee, at his/her sole discretion, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25 percent of the total available fee amount. Such 25 percent shall include base fee, if any.

**123. DEAR 970.5204-87 COST REDUCTION (APR 1999)**

- (a) General. It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the Contracting Officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.
- (b) Definitions

Administrative cost is the contractor cost of developing and administering the CRP. Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined,

and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE cost is the Government cost incurred implementing and validating the CRP. Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget. Shared Net Savings are those net savings which result from:

- (1) A specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort or
  - (2) A design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the Contracting Officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.
- (c) Procedure for submission of CRPs.
- (1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods

changes submitted by the Contractor shall contain, at a minimum, the following:

- (i) Current Method (Baseline)--A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative; and supporting documentation.
  - (ii) New Method (New Proposed Baseline)--A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished; and supporting documentation.
  - (iii) Feasibility Assessment--A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.
- (2) In addition, CRPs for the establishment of cost-plus- incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:
- (i) The proposed contractual arrangement and the justification for its use; and
  - (ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.
- (d) Evaluation and Decision. All CRPs must be submitted to and approved by the Contracting Officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:
- (1) Pose a risk to the health and safety of workers, the community, or to the environment;
  - (2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and Joint oversight agreements;
  - (3) Require a change in other contractual agreements;
  - (4) Result in significant organizational and personnel impacts;

- (5) Create a negative impact on the cost, schedule, or scope of work in another area;
  - (6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and
  - (7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.
- (e) **Acceptance or Rejection of CRPs.** Acceptance or rejection of a CRP is a unilateral determination made by the Contracting Officer. The Contracting Officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:
- (1) Result in net savings (in the sharing period if a design, process, or method change);
  - (2) Not reappear as costs in subsequent periods; and
  - (3) Not result in any impairment of essential functions
- (f) The failure of the Contracting Officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.
- (g) **Adjustment to Original Estimated Cost and Fee.** If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.
- (h) **Sharing Arrangement.** If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25 percent of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

- (i) Validation of Shared Net Savings. The Contracting Officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net shared savings.
- (j) Relationship to Other Incentives. Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.
- (k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

**PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**

**SECTION J**

**LIST OF ATTACHMENTS**

**PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**

**SECTION J**

**LIST OF ATTACHMENTS**

<b><u>DOCUMENT</u></b>	<b><u>NUMBER OF PAGES</u></b>
<b>ATTACHMENT A</b>	
ADVANCED UNDERSTANDING ON HUMAN RESOURCES FOR THE WASTE ISOLATION PILOT PLANT.....	TBD
<b>ATTACHMENT B</b>	
SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN .....	11
<b>ATTACHMENT C</b>	
RESERVED	
<b>ATTACHMENT D</b>	
PERFORMANCE EVALUATION AND MEASUREMENT PLAN.....	TBD
<b>ATTACHMENT E</b>	
SPECIAL FINANCIAL INSTITUTE ACCOUNT AGREEMENT .....	5
<b>ATTACHMENT F</b>	
KEY PERSONNEL.....	1
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**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT A**

**ADVANCED UNDERSTANDING ON HUMAN RESOURCES FOR THE WASTE  
ISOLATION PILOT PLANT**

In accordance with the Section H.27 entitled "Advance Understanding on Human Resources for WIPP," the selected Offeror and DOE will reach an advance understanding on Contractor human resources during the transition period.

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT B**

**SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS  
SUBCONTRACTING PLAN**

See Separate Electronic Document

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT C**

**RESERVED**

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT D**

**PERFORMANCE EVALUATION AND MEASUREMENT PLAN**

The Performance Evaluation and Measurement Plan will be negotiated during the Transition Period.

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT E**

**SPECIAL FINANCIAL INSTITUTE ACCOUNT AGREEMENT**

*NOTE: THE OFFEROR SELECTED FOR AWARD WILL BE REQUIRED TO AWARD A COMPETITIVE SUBCONTRACT TO A Financial INSTITUTION DURING THE TRANSITION PERIOD.*

(Name of Contractor)  
Contract Number XX-XXX-XXXXXXXXXX  
Department of Energy Account

This agreement entered into this, \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as “DOE”) and \_\_\_\_\_ a corporation existing under the laws of the State of \_\_\_\_\_ (hereinafter referred to as the “Contractor”) and \_\_\_\_\_, a financial institution corporation existing under the laws of the State of \_\_\_\_\_, located at \_\_\_\_\_ (hereinafter referred to as the “Financial Institution”).

RECITALS

- (a) On the effective date of \_\_\_\_\_, \_\_\_\_\_, DOE and the Contractor entered into Agreement(s) No. \_\_\_\_\_, or a Supplemental Agreement(s) thereto, providing for the transfer of funds on a payments-cleared basis.
- (b) DOE requires that amounts transferred to the Contractor thereunder be deposited in a Special Bank Account at a financial institution covered by Department of the Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000.

This Special Bank Account must be kept separate from the Contractor’s general or other funds, and the parties are agreeable to so depositing said amounts with the Financial Institution.

- (c) The Special Bank Account shall be designated [Name of Contractor], DOE Special Bank Account.

CONVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that--

- (1) The Government shall have a title to the credit balance in the Special Bank Account to secure the repayment of all funds transferred to the Contractor, and said title shall be superior to any lien, title or claim of the Financial Institution or others with respect to the Special Bank Account.
- (2) The Financial Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the transfer of funds into and the withdrawal of funds from the Special Bank Account, which are hereby incorporated into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from the Special Bank Account. After receipt by the Financial Institution of written directions from DOE, the Financial Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions.
- (3) DOE, or its authorized representatives, shall have access to financial records maintained by the Financial Institution with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Financial Institution for a period of 6 years after the final payment under the Special Bank Account Agreement.
- (4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Financial Institution shall promptly notify DOE at-

U.S. Department of Energy  
Albuquerque Operations Office  
Albuquerque Financial Service Center  
P.O. Box 5400  
Albuquerque, New Mexico 87185

- (5) DOE shall authorize funds that shall remain available to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Financial Institution for the benefit of the Special Bank Account. The Financial Institution agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily account balance in a net positive and as close to zero as administratively possible.

The Financial Institution agrees to service the account in this manner based on the requirements and specifications contained in the Contractor's solicitation No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_, which is attached to this Special Bank Account Agreement. The Financial Institution agrees that per-item costs, detailed in the form "Schedule of Financial Institution during the term of this Agreement.

- (6) The Financial Institution shall post collateral, acceptable under Department of the Treasury Circular 176, with the Federal Reserve Bank in an amount sufficient to collateralize the highest balance the Special Bank Account included in this Agreement, less the Department of the Treasury-approved deposit insurance.
- (7) This Special Bank Account Agreement, with all its provisions and covenants, shall be in effect for a term of \_\_\_\_ years, beginning on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, unless earlier terminated as provided in this agreement.

The Contractor has the option to extend the term of the Special Bank Account Agreement for up to \_\_\_\_\_ years. The total duration of this Special Bank Account Agreement, including the options, shall not exceed five years. Written notification of the option to extend will be provide by the Contractor ninety days prior to the expiration of this Agreement.

- (8) DOE, the Contractor, or the Financial Institution may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.
- (9) DOE or the Contractor may terminate this Agreement at any time upon 30 days' written notice to the Financial Institution if DOE or the Contractor, or both parties, find that the Financial Institution has failed to substantially perform its obligations under this Agreement or that the Financial Institution is performing its obligations in a manner that precludes administering the program in an effective and efficient manner or that precludes the effective utilization of the Government's cash resources.
- (10) Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement between DOE and the Contractor is not renewed or is terminated, this Special Bank Account Agreement between DOE, the Contractor, and the Financial Institution shall be terminated automatically upon the delivery of written notice to the Financial Institution.
- (11) In the event of termination, the Financial Institution agrees to retain the Contractor's Special Bank Account for an additional 90-day period after the effective termination date, to allow for clearance of outstanding payment items. During this 90-day period, DOE shall place on deposit in that account sufficient funds to cover all outstanding payments items presented for payment.

During the entire 90-day period, it is further understood that:

- (a) The Financial Institution shall maintain collateral in an amount sufficient to collateralize the highest balance in the Special Bank Account, less Federal Deposit Insurance Corporation coverage on the account.

- (b) All service charges shall be consistent with the amounts reflected in this Special Bank Account Agreement.
- (c) All terms and condition of the bid submitted by Financial Institution that are not inconsistent with the 90-day additional term shall remain in effect.
- (d) This Agreement shall continue in effect, for the 90-day additional period, with exception of the following:
  - 1. Funds Authorized (Covenant 5)
  - 2. Term Agreement (Covenant 7)
  - 3. Termination of Agreement (Covenants 8 and 9)

All terms and conditions of the aforesaid bid submitted by the Financial Institution that are not inconsistent with this 90-day additional term shall remain in effect for this period.

The Financial Institution has submitted the forms entitled "Technical Representations and Certifications," and "Schedule of Financial Institution Processing Charges." These forms have been accepted by the Contractor and DOE and are incorporated herein with the document entitled "Financial Institution's Information on the Payments Cleared Arrangement" as an integral part of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Special Bank Account Agreement, which consists of \_\_\_\_\_ pages, to be executed as of the day and year first above written.

For:	(The Contractor)	For:	(The Financial Institution)
Signature	_____	Signature	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

For: The United States of America:

Signature \_\_\_\_\_

Name: \_\_\_\_\_

Title: Contracting Officer

Date: \_\_\_\_\_

CERTIFICATE

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of corporation named as Contractor herein; that \_\_\_\_\_, who signed this Special Bank Account Agreement on behalf of the Contractor, was then \_\_\_\_\_ of said corporation; and that said Special Bank Account Agreement was duly signed for in behalf of said corporation by authority of its governing body and is within the scope of its corporation powers.

\_\_\_\_\_  
(Corporate Seal) (Signature)

CERTIFICATE

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as the Financial Institution herein; that \_\_\_\_\_ who signed this Agreement on behalf of the Financial Institution, was then \_\_\_\_\_ of said Bank; and that said Special Bank Account Agreement was duly signed for and in behalf of said Bank by authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_  
(Corporate Seal) (Signature)

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT F**

**KEY PERSONNEL**

See Separate Electronic Document

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT G**

**PERFORMANCE GUARANTEE AGREEMENT**

See Separate Electronic Document.

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT H**

**LIST OF APPLICABLE DIRECTIVES**

**Effective: October 1, 1999\***

This document is "List B" as required by Contract Clause entitled "Laws, Regulations, and Directives." Upon completion of a formal assessment of additions, changes, or deletions of requirements contained in this list, the Contractor shall initiate any necessary actions to implement the requirements, including changes to contract terms and conditions (e.g., budget, schedule), to ensure that work will continue to be performed to the latest revision of the requirements documents. "List B" shall, as a minimum, be reviewed and physically updated on an annual basis as part of the annual fee and scope contract modification process to incorporate any necessary changes or updates to the existing list of requirements documents shown in this part of the Contract. As an additional part of the review and update, any new requirements documents that have been determined to be applicable during the preceding fiscal year, and not previously added, shall also be added to "List B" in the annual fee and scope modification

- A. Standards/Requirements Identification Document (SRID): The requirements set forth in the S/RID are hereby incorporated by reference.
  
- B. Other Requirements Documents: This Section B lists documents reviewed and assessed as applicable to the WIPP, and to activities associated with, affecting, or supporting the WIPP facility and programs. Since S/RID requirements are incorporated by reference in Section A, this Section B documents are generally administrative or programmatically descriptive in nature and are not those documents that prescribe requirements for the environmental, safety, and health concerns specifically applicable to the WIPP. The general documents in this Section B may include, but are not limited to, areas such as accounting and budgeting, safeguards and security, and information management. The documents listed in this Section B in Boldface type are specifically listed in the S/RID, but may also include general program requirements in addition to environmental, safety, and health requirements. This Section B listing is currently effective as of the date shown in the Title on this page.\*

<u>Directive</u>	<u>Title</u>
DOE0130.1	Budget Formulation Process
DOE0135.1	Budget Execution-Funds Distribution and Control
<b>DOE0151.1</b>	<b>Comprehensive Emergency Management System</b>
DOE0200.1	Information Management Program

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This list will be updated during the transition period.

DOEO210.1	<b>Performance Indicators and Analysis of Operations Information</b>
DOEO225.1A	<b>Accident Investigations</b>
DOEO231.1	<b>Environment, Safety, and Health Reporting</b>
DOEO232.1A	<b>Occurrence Reporting and Processing of Operations Information</b>
DOEO241.1	Scientific and Technical Information Management
DOEO251.1A	Directives System
DOEO350.1	Contractor Human Resource Management HR Programs
DOEO413.1	Management Control Program
DOEO414.1	Quality Assurance
DOEO420.1	<b>Facility Safety</b>
DOEO425.1A	Startup and Restart of Nuclear Facilities
DOEO 430.1A	<b>Life Cycle Asset Management</b>
DOEO430.2	In-House Energy Management
DOEO440.1A	<b>Worker Protection Management for DOE Federal and Contractor Employees</b>
DOEO440.2	Aviation
DOEO442.1	Department of Energy Employee Concerns Program
DOEO451.1A	National Environmental Policy Act Compliance Program
DOEO460.1A	<b>Packaging and Transportation Safety</b>
DOEO460.2	<b>Departmental Materials Transportation and Packaging Management</b>
DOEO470.1	Safeguards and Security Program
DOEO471.1	Identification and Protection of Unclassified Controlled Nuclear Information
DOEO471.2A	Information Security Program
DOEO472.1B	Personnel Security Activities
DOEO534.1	Accounting
DOE1220.1A	Congressional and Intergovernmental Affairs
DOE1230.2	American Indian Tribal Government Policy
DOE1240.2	Unclassified Visits and Assignments by Foreign Nationals
DOE1270.2B	Safeguards Agreement with the International Atomic Energy Agency
DOE1300.2A	<b>Department of Energy Technical Standards Program</b>
DOE1300.3	Policy on the Protection of Human Subjects
DOE1340.1B	Management of Public Communications Publications and Scientific, Technical and Engineering Publications
DOE1350.1	Audiovisual and Exhibits Management
DOE1360.2	Unclassified Computer Security Program
DOE1450.4	Consensual Listening-In To or Recording Telephone/Radio Conversations
DOE1500.3	Foreign Travel
DOE2030.4B	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE2100.8A	Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities
DOE2100.12A	Payments for Special Burdens and in Lieu of Taxes
DOE2110.1A	Pricing of Departmental Materials and Services
DOE2320.1C	Cooperation with the Office of Inspector General
DOE2320.2B	Establishment of Departmental Position on Inspector General Reports

DOE2321.1B	Auditing of Programs and Operations
<b>DOE5400.1</b>	<b>General Environmental Protection Plan</b>
<b>DOE5400.5</b>	<b>Radiation Protection of the Public and the Environment</b>
DOE5480.4	Environmental Protection, Safety, and Health Protection Standards
DOE5480.19	Conduct of Operations Requirements for DOE Facilities
<b>DOE5480.20A</b>	<b>Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities</b>
DOE5480.21	Unreviewed Safety Questions
DOE5480.22	Technical Safety Requirements
DOE5480.23	Nuclear Safety Analysis Reports
DOE5530.5	Federal Radiological Monitoring and Assessment Center
DOE5560.1A	Priorities and Allocations Program
DOE5610.14	Transportation Safeguards and Security Interests
DOE5632.1C	Protection and Control of Safeguards and Security Interests
DOE5632.7A	Protective Force Program
DOE5639.8A	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities
DOE5670.1A	Management and Control of Foreign Intelligence
DOE5670.3	Counterintelligence Program
<b>DOE5820.2A</b>	<b>Radioactive Waste Management</b>
DOE6430.1A	General Design Criteria
<b>DOEM231.1-1</b>	<b>Environment, Safety and Health Reporting Manual</b>
<b>DOEM232.1-1A</b>	<b>Occurrence Reporting and Processing of Operations Information</b>
DOEM440.1-1	DOE Explosives Manual
DOEN440.1	Interim Chronic Beryllium Disease Prevention Program
DOEN441.1	Radiological Protection for DOE Activities

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT I**

**GUIDANCE FOR PREPARATION OF DIVERSITY PLAN**

*(See Contract Clause entitled "Diversity Plan")*

This Guidance is to assist the Contractor in understanding the information being sought by the Department for each of the Diversity elements and where these issues are already addressed in a Contract, the Contractor need only cross reference the location.

**Work Force**

This Contract includes clauses on Equal Opportunity and Affirmative Action. The Contractor should discuss its policies and plans for implementation of these clauses in its operations. If the Contractor already has procedures in place, these should be discussed and copies provided.

**Educational Outreach**

The Contractor should outline or discuss any programs already provided, or which it intends to provide, which will provide employees an opportunity to improve their employment skills and opportunities. These programs may already be discussed in the proposal submitted for this Contract or in the Contract itself and could include: educational assistance allowance, provision for outside training programs either during or outside regular work hours, and executive training programs for non-executive employees. The Contractor should also discuss any plans to participate in any program supporting Historically Black Colleges and Universities, Hispanic Serving Institutions and Native American Institutions.

**Community Involvement and Outreach**

An Offeror's proposal or this Contract may include a section dealing with community involvement and outreach activities. In that event, those sections may be cross-referenced and do not need to be repeated. Contractor community relation activities could include support for the following activities: support for science, mathematics and engineering education; support for community service organizations; assistance to Governmental and community service organizations and for equal opportunity activities; and community assistance in connection with work force reduction plans. The Contractor may provide support to these activities through direct sponsorship or making individual employees available to work with the specific community activity. The Contractor's Diversity Plan should discuss the Contractor's existing and planned activities promoting community involvement of its employees as well as the corporation.

### **Subcontracting**

If appropriate to the Contractor, the Contract will contain FAR 52.219-9 "Small Business Subcontracting Plan" and other small business related clauses. Additionally, the RFP may have contained additional guidance on small business subcontracting. The Contractor should briefly summarize its subcontracting plan. If the Contractor is participating, or plans to participate, in the Department's Mentor-Protégé Program, this involvement or planned involvement, should be summarized. Information concerning its subcontracting plans already submitted and approved do not need to be redeveloped or renegotiated.

### **Economic Development (Including Technology Transfer)**

Many of the Department's contracts include clauses dealing with technology transfer. Planning or activities developed under such clauses may apply to this element of the Contractor's Diversity Plan. Additionally, some of the subcontracting activities planned by the Contractor with small business, small disadvantaged businesses, or woman-owned small businesses may be entered into for the purpose of assisting the economic development of or transferring technology to such a business. The Contractor's Diversity Plan should outline and discuss its planned activities promoting economic diversification of the local community.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT CONTRACT ID CODE PAGE 1 OF 1

2. AMENDMENT/MODIFICATION NO. <b>A001</b>	3. EFFECTIVE DATE <b>See Block 16C</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY <b>U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400</b>		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC 407 West Greene Street Carlsbad, NM 88220</b>		9A. AMENDMENT OF SOLICITATION NO.	
		9B. DATED (SEE ITEM 11)	
		10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>	
		10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>	
CODE	FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS; IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF
D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): <b>X CLAUSE NO. 191, OBLIGATION OF FUNDS (APR 1994) (MODIFIED)</b>

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_ copies to the issuing office

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

A. The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Basic Contract		\$ <del>20,000,000.00</del>
Funds Obligated by this Modification No.	<b>A001</b>	<b>10,996,356.00</b>
Funds Obligated since Inception of Contract		\$ <del>30,996,356.00</del>

B. Pursuant to the contract provision entitled "TRAVEL RESTRICTIONS," the ceiling limitation for the period February 1, 2001 to September 30, 2001 is \$1,942,667. This is an interim ceiling that is expected to be adjusted to a final dollar ceiling within 60 days.

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>Juan D. Williams, Contracting Officer Management and Operating Contracts Division</b>		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED <b>1-31-01</b>
BY _____ (Signature of person authorized to sign)			

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE 1 OF 1 PAGES
2. AMENDMENT/MODIFICATION NO. <b>M002</b>	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400		7. ADMINISTERED BY (If other than Item 6)	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC 407 West Greene Street Carlsbad, NM 88220</b>			9A. AMENDMENT OF SOLICITATION NO.	
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CODE	FACILITY CODE			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

**12. ACCOUNTING AND APPROPRIATION DATA (If required)**

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority). THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
<input type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(d)
<input checked="" type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF <b>Public Law 95-91 and Other Applicable Law</b>
<input type="checkbox"/>	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):

E. IMPORTANT: Contractor  is not  is required to sign this document and return **3** copies to the issuing office.

**14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)**

**A. Section J is hereby modified to incorporate Attachment A to the Contract entitled "Appendix A, Advance Understanding on Human Resources for WIPP."**

**B. This Appendix A is effective as of February 1, 2001.**

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
BY <b>Signature Deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"</b>		BY <b>Signature Deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"</b> <i>(Signature of Contracting Officer)</i>	

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT A**

**APPENDIX A**

**ADVANCE UNDERSTANDING ON HUMAN RESOURCES**

**FOR**

**THE WASTE ISOLATION PILOT PLANT**

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APPENDIX A

I. INTRODUCTION

The personnel policies, wage and salary schedules, transportation, travel, and living expenses and related policies set forth in this Appendix A are the policies applicable to this Contract for the purpose of determining allowable costs as provided for in the Clause of this Contract entitled "Allowable Costs, Base-Fee, and Award Fee" and shall apply to all employees of the Contractor engaged in work under this Contract, who devote 50 percent or more of their time to Contract work, irrespective of the place of performance of Contract work.

Only those items of personnel costs and related expenses specifically set forth in this Appendix A are allowable costs under this Contract. However, either party may at any time request that this Appendix A be revised and the parties hereto agree to negotiate in good faith concerning any requested revision. Revisions to this Appendix A shall be accomplished by and reflected in Reimbursement Authorizations issued by the Contracting Officer and executed by both parties. Execution of such Reimbursement Authorization, hereinafter called "RA", by the General Manager or higher corporate authority will be binding on the Contractor. The Contractor shall submit each proposed RA to the Contracting Officer prior to or as near the proposed effective date as reasonably possible. Unless otherwise approved by the Contracting Officer, the effective date of such RA will not precede the date on which the Contractor first requested such RA in writing.

The Contractor shall select, manage, and direct all work forces, determine general working conditions and rules of work for all employees, and apply the policies set forth herein in general conformance with the practices, procedures, and methods used in the conduct of its business insofar as those practices, procedures, and methods are not inconsistent with this Contract. Through the Contractor's own standard audit procedures and executive reviews, the Contractor will monitor the operations under this Contract for conformance with the policies set forth in this Appendix A.

The Contractor shall maintain a method of manpower and budgeting controls to govern the number of people required and the costs of personnel services to achieve economy of operation, taking into consideration the nature and scope of operations under this Contract.

II. DEFINITIONS

Terms used in this Appendix A are defined as follows:

- A. Exempt Employee - An employee who performs work in an executive, administrative, or professional capacity, who is determined to be exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act of 1938, as amended.
- B. Nonexempt Employee - Any employee, other than an exempt employee subject to provisions of the Fair Labor Standards Act of 1938, as amended.
- C. Base Salary - The monthly salary established for salaried employees paid semi-monthly, excluding any premium pay.
- D. Workday - The 24-hour period beginning with the regularly assigned starting time of an employee's work shift.
- E. Basic Workweek - A 40-hour week consisting of five basic workdays within a designated period of seven consecutive days considered as a unit for pay purposes. A "basic workweek" may also be referred to as a "regular workweek."
- F. Continuous Operation - An operation which must be run on a 24-hour day, 7-day week and a week-by-week basis.
- G. Credited Service - Credits for periods during which the employee is actually at work for the Contractor, or for periods of absence for which credit is gained.
- H. General Manager - The Contractor's supervising representative who is in charge of operations for the Contractor at the Waste Isolation Pilot Plant.
- I. Immediate Family - This includes a foster child residing in the home, or the employee's parent, brother, sister, child, spouse, mother-in-law, father-in-law, brother-in-law (which includes the employees' sister's husband, the employees' spouse's brother, and the husband of the employee's spouse's sister), sister-in-law (which includes the employee's brother's wife, the employee's

spouse's sister, and the wife of the employee's spouse's brother), son-in-law, daughter-in-law, grandparent, grandparent-in-law, stepparent, step-brother, stepsister, stepchild, or grandchild.

- J. Night Turn Shifts - Schedules of working hours which result in an employee's regularly scheduled quitting time being after 9:00 p.m. and up to and including 9:00 a.m. of the following day.
- K. Transfer - A permanent change for eligible employees whose work location is anticipated to extend for a period in excess of 12 consecutive calendar months.
- L. Assignment - A temporary change in an employee's work location with an anticipated duration of 12 consecutive calendar months or less.
- M. Plant Closing - The announcement and implementation of a plan to terminate and discontinue all Contractor operations, without any currently existing plan for resumption or continuation or operations at that site by either the Contractor or any other Government contractor or Government agency.
- N. WTS - Means the Westinghouse TRU-Solutions LLC.
- O. Waste Isolation Pilot Plant - May be abbreviated as WIPP, as appropriate.
- P. Alternate Work Schedule (AWS) - A regularly scheduled and established workweek in which an employee works one or more days in excess of the traditional eight (8) hour workday each designated workweek (pay accounting period).
- Q. Contracting Officer - The Albuquerque Operations Office Management and Operating Contracts Division Director.
- R. Core Business Hours - Those hours of operation established by the DOE to ensure that WTS provides adequate support and coverage to their customers (i.e., DOE, suppliers, external agencies) during traditional business hours. Core business hours are identified and designated by the WTS General Manager's Office.
- S. Flex-time - That designated period of time worked by an employee outside the core business hours to meet the requirements established for their agreed-upon alternate work schedule. Flex-time hours may be worked each day before core business hours begin, after core business hours end, or

any combination of these options that is established as both permanent and mutually acceptable to the employee and their manager.

- T. Traditional Workweek - The traditional schedule for employee work consisting of five consecutive days, each with an established shift of eight working hours and totaling 40 working hours for the workweek.

III. PAY POLICIES

A. General Policy

Administration of wages and salaries under this contract shall be carried out in accordance with sound wage and salary administration principles, as approved by the Contracting Officer, and in a manner which shall provide for equitable treatment of personnel on a definitive, systematic basis consistent with economic business practices and judicious expenditure of public funds, and which shall result in payment of total compensation to individual employees conforming to the standards of reasonableness as contemplated by the Department of Energy Acquisition Regulations (DEAR), particularly DEAR 970.3102.2 and 970.5204.13.

B. Salary Schedules

1. Monthly salary schedules will be approved by DOE and administered by the contractor within the annual Compensation Increase Plan.
2. Hourly wages will be paid as outlined in the collective bargaining agreement
3. No employee may be paid in excess of the salary range maximum of the employee's applicable salary grade without the written approval of the Contracting Officer.
4. During the last quarter of each fiscal year, the Contractor shall transmit the following information to the Contracting Officer:
  - a. A complete listing of all job titles authorized in each salary grade of the approved salary schedules.
  - b. The number of incumbent employees, and the salaries paid within each job title as authorized for inclusion in the approved salary schedules.

C. Compensation Increase Plan

1. During the last quarter of each fiscal year, the Contractor shall develop and justify Compensation Increase Plan for exempt and nonexempt employees in a manner prescribed by, and for review and approval of, the Contracting Officer. The funds shall be expressed on an annualized basis, which shall represent the maximum amount to be expended in the succeeding fiscal year for all chargeable salary increases. The funds shall be based on such factors as national and industry surveys, the Contractor's internal policies and practices, area salaries, and such other criteria as may be pertinent to the establishment of competitive wages and salaries, and shall be expressed as a percentage of base salaried exempt and nonexempt payrolls, as of September 30 of the preceding fiscal year.
2. Once an individual's salary increase is charged to a fund, reuse of the amount; i.e., recovery for any other purpose during the plan year, is unallowable. If an individual terminates before receiving an increase, the portion of the fund allocated for that increase may remain in the fund. Each component of the fund; i.e., adjustments and reclassification, merit, and promotion increases shall be broken out separately. The Contractor shall also provide a copy of the annually developed salary guidelines prepared for supervisory use, indicating the parameters for granting various increases based on employee performance and current salary position.
3. The dollar amount of the fund shall be subject to review and adjustment by the Contracting Officer upon a significant reduction in Contractor employment levels, as in a reduction-in-force.
4. Any unallocated and unexpended portion of the annual salary increase funds thus established may not be carried forward into the succeeding fiscal year.
5. Salary increases granted to new hires and employees who transfer in from other WTS locations will not be chargeable to the annual salary increase fund allocation.

D. Salary Increase Administration

The Contractor shall obtain the approval of the Contracting Officer for initial approval of, or subsequent changes to the amount of individual compensation granted to the General Manager and the Assistant General Manager(s). These requests for approval shall be submitted by the Contractor to the DOE on Compensation Approval Form DOE F3220.5, at least thirty (30) days in advance of the proposed effective date of the action; each requested salary action shall contain supporting data to justify that proposed action. The DOE shall exert its best efforts to process the approval determination and return the approved document to the Contractor within the 30-day period. Regardless of whether or not the approval determination has been subsequently returned to the Contractor within 30 days, the change shall be retroactive to the effective date proposed by the Contractor.

E. Hours of Work, Overtime, and Shift Differential

1. Contractor's Regular Work Schedule

The regular work schedule of the Contractor is an Alternate Work Schedule (AWS), and shall be a 40-hour basic workweek, consisting of five basic workdays within a designated period of seven consecutive days considered as a unit for pay purposes. This regular, basic workweek for the WTS is an alternative to the traditional 40-hour work schedule of five consecutive days, each with an established eight-hour shift, and considered as a unit for pay purposes.

2. Other Needs for Establishment of an AWS

An AWS may be established by the Contractor for various work activities that, on either a regular and permanent basis, or on a temporary basis, require a schedule of work outside the defined, scheduled AWS workweek. This type of an AWS may be needed, for example, when various work activities are required to maintain and support continuing facility operations, to improve operational efficiency, or to provide emergency services.

3. Requirements Regarding Use of Overtime

The Contractor shall manage and control overtime to efficiently conduct business and provide for cost-effective utilization of human resources. For the purpose of this Contract, the Contractor's overtime pay policies shall apply within the following limitations:

- a. Overtime is any time worked more than 40 hours in the basic scheduled workweek, and any time worked outside an established AWS for which the employee is compensated.
- b. A basic workweek comprises 40 total hours within five workdays, within a designated period of seven consecutive days that is considered as a unit for pay purposes.
- c. An extended workweek is defined as work regularly scheduled in excess of the basic workweek for a period in excess of 4 consecutive weeks.
- d. The Contractor shall submit to the Contracting Officer for approval an annual overtime control plan that includes at a minimum (1) an overtime premium fund (maximum dollar amount); (2) specific controls for casual overtime for exempt employees; and (3) an evaluation of alternatives to the use of overtime.

Overtime payments for exempt and nonexempt employees scheduled to work an "extended workweek" as defined in Subparagraph E.3.c., above, or scheduled for a specific period of overtime, must be approved in advance by the Contracting Officer. The Contracting Officer shall approve any additional overtime premium funds or plan changes required for mission requirements.

F. Overtime and Premium Pay

1. Nonexempt Employees

- a. Nonexempt employees will be paid one and one-half (1-1/2) times their straight-time rate for hours worked in excess of 40 hours in any workweek

- b. For the purpose of determining overtime hours worked, a workday begins when the employee starts work and ends 24 hours later. An employee's workweek begins at a fixed time each week based on the employee's assigned working schedule and ends 168 hours later.
- c. In computing overtime over 40 hours in any workweek, an observed holiday not worked but for which a nonexempt employee receives pay will be counted as time worked.
- d. In computing hours worked in a regular scheduled workday, involuntary absences will count as hours worked but voluntary absences are considered as non-worked hours.
- e. A nonexempt employee who reports for work at management's request on regular rest days or at times not regularly scheduled (excluding periods contiguous to regular work shifts) will be paid for hours actually worked or for 4 hours whichever is greater. However, any such employee who does not complete 4 hours work when work is offered shall be paid only for hours actually worked.

2. Exempt Employees

- a. When overtime work is approved in conformance with Paragraph E.3., above, exempt employees will be paid for such overtime as straight time.
- b. Overtime, which an exempt employee works to accomplish the normal requirements of his/her position, is considered casual and is not compensated.

3. Overtime Meal Allowances

- a. Reasonable costs for one meal may be provided to each nonexempt employee who is required to work beyond his/her regular shift because of unscheduled overtime when total time including his/her scheduled shift is at least 10 hours. An additional meal allowance may be paid for each consecutive 6 hours of work performed thereafter, provided the work is to continue after each period.

- b. Exempt employees may be reimbursed, within reasonable limits, for meals purchased in connection with uncompensated overtime.

G. Night-Turn Bonus

Exempt and nonexempt employees who are assigned to a (with regular quitting time between 9:00 p.m. and 9:00 a.m.) will receive a 10 percent night-turn bonus for all work performed. Such premium will be computed on the employee's basic salary and any payments for compensable overtime.

H. Severance Benefits

In the event of reduction-in-force, severance benefits will be administered in accordance with the Westinghouse Government Services Group (WGSG) Involuntary Separation Plan for non represented employees or the WGSG Employee Security and Protection Plan, for union represented employees as prescribed in "Your Westinghouse Benefits" and in the Westinghouse Benefit Plan Documents. Nonexempt and exempt employees, including management employees, who have one or more years (for non-represented employees) or two or more years of service (for union represented employees), and are laid off from the Active Roll are eligible for benefits provided in the WGSG Involuntary Separation Plan or WGSG Employee Security and Protection Plan for union represented employees. The Manager, Human Resources, shall, at the time layoffs occur, advise the DOE regarding the potential cost of benefits which may accrue under this Plan. In the event of plan modifications the contractor will obtain the contracting officer approval of such changes.

I. Payments After Death of Employees

1. Upon approval of the Contractor's General Manager, an employee's salary may be paid for two weeks following the date of employee's death.

If a deceased employee's period of credited service exceeds five (5) years, the Contractor's General Manager may approve an additional two (2) weeks base salary providing death was not preceded by an illness of more than (1) month during which the employee was carried on the salary roll.

2. Payment shall also be made for accrued vacation not taken by the deceased employee.
  
3. In the event an employee dies while on temporary assignment or on permanent assignment of two years or less duration, the transportation and living expenses incurred in returning his/her survivors to the originating location will be allowed as well as return of the body if the next of kin so desires. All household and personal effects will be packed and shipped to the originating location or an amount may be paid equivalent to such costs in event the survivor specifies a location more distant than the originating location.

IV. LABOR RELATIONS

A. Collective Bargaining

The Contractor shall respect the right of employees to organize, form, join, or assist labor organizations, bargain collectively through representatives of the employees' own choosing, and to engage in other concerted activities for the purpose of collective bargaining and also the right to refrain from such activities.

Costs of wages and fringe benefits to employees represented by collective bargaining units and all other costs and expenses incurred pursuant to the provisions of collective bargaining agreements and revisions thereto are allowable costs.

The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to any negotiation concerning any collective bargaining agreement or revision. The Contractor shall keep the Contracting Officer advised of significant developments during any negotiations.

The Contractor shall promptly advise the Contracting Officer of labor relations developments involving the Contractor or any subcontractor on a government-owned or operated site which appears likely to lead to a work stoppage or appears to involve: the National Labor Relations Board at any level; referral to the Energy Labor-Management Relations Panel; lawsuits under the Labor Management Relations Act of 1947, as amended, or other Federal or State labor law; or any grievance which reasonably may be expected to be referred to arbitration under a collective bargaining agreement. The Contractor will promptly inform the Contracting Officer regarding the nature and amount of any potential award or settlement exceeding \$10,000 to be decided in favor of the employees. The Contractor will provide the Contracting Officer copies of arbitration awards.

Initiation of any action by the Contractor under the Labor Management Relations Act of 1947, as amended, and/or involving the National Labor Relations Board shall have the prior approval of the Contracting Officer.

B. Collective Bargaining Agreements: The Contractor currently has an agreement with the Paper, Allied-Industrial, Chemical & Energy Workers (PACE) International Union, AFL-CIO, Local 4-9477; June 01, 1999 through September 30, 2002.

V. GROUP BENEFITS, INSURANCE PLANS, AND LEGALLY REQUIRED PAYMENTS

A. Policy/Objectives

1. The Contractor will design and administer benefit programs to attract, retain, and motivate competent and productive employees to support the mission at WIPP. The program shall be:
  - a. Competitive with the external labor markets.
  - b. Cost-effective and within criteria prescribed by DOE.
  - c. Compliant with all applicable laws and regulations.
2. Benefits program costs directly attributable to benefits provided to Contractor employees or Contractor retirees, as well as reasonable administrative costs, will be allowable under this Appendix A. Allowable insurance costs incurred in connection with the plans shall be all costs under the above plans which are applicable to the work under the Contract and which are in excess of the employee's or retiree's level of premium contribution.
3. The Contractor may provide employees the provision of making required benefit plan contribution payments on a pre-tax basis consistent with Section 125 of the IRS Tax Code
4. DOE will recognize, as an allowable cost under this Contract, any and all costs, fines, penalties, retroactive salary adjustments, and/or charges resulting from the practices of: (1) reducing exempt employees' paid leave accruals for absences of less than whole workdays, and (2) paying exempt employees straight time overtime and shift differential.

B. Exempt and Nonexempt/Nonbargaining Benefits Program

The Contractor shall:

1. The Contractor shall submit to the Department of Energy either a Benefit Value Study or an U. S. Chamber of Commerce (COC) Employee Benefit Survey Comparison based on facility size.

A. Benefit Value Study

- a. Conduct a benefit value study every three-(3) years using agreed upon actuarial

methods. This study:

- b. Shall be valid for three (3) years.
- c. Must produce results that fall within the range of acceptable values. If not, the Contractor will submit an action plan to bring the benefit programs into conformance.
- d. Must include a list of not less than fifteen (15) participants to be a part of the study. The list must be mutually agreed upon by the Contractor and DOE and should include organizations in the same industries from which the Contractor competes for employees. The participant list should remain constant from period to period.
- e. Shall include all non-statutory benefit plans offered by the Contractor, including pension plans, welfare benefit plans, and paid-leave plans.
- f. Shall utilize participant comparison data that is current
- g. Must be performed by a national consulting firm with expertise in benefit value studies.
- h. Shall include a complete copy of the methodology used to define each benefit plan, a description of the benefit plans, a list of survey respondents and the actuarial assumptions.

B. U. S. Chamber of Commerce (COC)

If the COC is utilized, by March 1 of each year, the contractor shall provide to the Contracting Officer a completed COC survey, including a comparative analysis to the COC survey data, utilizing either the all industries data or the data from a single Service Industry Code (SIC) that has been agreed to by the Contracting Officer. The calculated per capita benefits cost per full-time equivalent employee shall be compared to the most recently published COC survey benefit year.

2. The contractor shall obtain prior approval for changes to the benefits plan, which would result in an increase in costs to the government.
3. Determine the value of the current benefit program costs as compared to the specified range of acceptability defined by the benefits value study as follows:
  - a. The Contractor and Contracting Officer shall review the total compensation package to include pay levels in relationship to the market, with full consideration to paid rate to market positions, and the average net benefit plan value. Based on this review, the Contractor and Contracting Officer shall mutually agree whether or not additional consideration of the average net benefit plan value in the context of the total compensation package is necessary.
  - b. When the Contractor's net benefit plan value does not exceed five percent (5%) of the average net benefit value as determined by the benefit study, the program costs shall be considered within the range of acceptability and no further action will be required on the part of the Contractor.
  - c. When the Contractor's net benefit plan value falls within a range that is greater than five percent (5%) and up to ten percent (10%) of the average net benefit value as determined by the benefit study, an action plan to achieve conformance with the range of acceptability will be required, unless otherwise justified and approved in writing by the Contracting Officer.
  - d. When the Contractor's net benefit plan value exceeds ten percent (10%) of the average net benefit value as determined by the benefit study, an action plan to achieve conformance with the range of acceptability is required. Any action taken will be implemented in a manner so as to preclude disparate impact to nonbargaining employees.

4. Apply the provisions of the benefit plans as follows:

a. Group Insurance

- 1) The Contractor has made available to its exempt and NENB employees at WIPP the following insurance benefits:

Basic Life Insurance – Life insurance coverage for employees that provides death benefits

Weekly Accident and Sickness Benefits – Partial income replacement benefits if an employee becomes totally disabled.

Accidental Death or Dismemberment Benefits – Accident insurance coverage for employees that provides benefits for certain accidental injuries or death.

Travel Accident Insurance Benefits – Accident insurance benefits if an employee is killed or seriously hurt while traveling on corporate business.

Health and Welfare Benefits – Comprehensive health care coverage for employees and their eligible dependents. Includes medical, vision, mental health and substance abuse treatment, and prescription coverage.

Group Dental Insurance – Comprehensive dental and routine preventive care coverage for employees and their eligible dependents.

Personal Accident Insurance Coverage (Employee) – Accident insurance coverage for employees that provides benefits for certain accidental injuries or death.

Personal Accident Insurance Coverage (Family) – Accident insurance coverage for eligible dependents that provides benefits for certain accidental injuries or death.

Health Care and Dependent Care Spending Accounts – Pretax method to pay for IRS eligible health care and dependent care expenses for the employees and their eligible dependents.

Dependent Life Insurance – Life insurance coverage for spouses and dependent children

Long Term Disability – Income protection benefits for employees who become totally disabled

Long Term Care – Coverage to help with the expenses of long-term care services when you are unable to care for yourself (i.e., nursing home, adult day care, assisted living)

Group Universal Life Insurance – Additional life insurance benefits for employees

Long-Term Care Insurance – Coverage to help with the expenses of long-term care services (i.e., nursing home, adult day care, assisted living)

Retiree Pre-Medicare Health and Welfare Benefits – Continuation of company health care for retirees and eligible dependents. Includes medical, vision, mental health and substance abuse treatment, and prescription coverage.

Special Programs with Medicare – Coverage for hospital program and prescriptions for retirees and their spouses who become eligible for Medicare. The hospital program pays benefits for hospital confinements for sickness or injury that is not job related.

Pre-Medicare Dental Coverage – Comprehensive Dental coverage for retirees and spouses who are not Medicare-eligible, and eligible dependent children.

Retiree Basic Life Insurance Coverage – Life insurance coverage

Retiree Group Life Insurance – Additional life insurance coverage for retirees

Long-Term Care Insurance – Coverage to help with the expenses of long-term care services (i.e., nursing home, adult day care, assisted living)

- 2) Pro-rata portion of dividends, returned premiums, or other credits which may accrue to the group insurance program shall be credited to the portion of the Contractor's contributions allowable under this Contract.
  
- 3) In the event of the termination or expiration of this Contract, all liabilities and costs associated with the Retiree Comprehensive Medical Insurance plans shall be assumed by the DOE and/or a successor contractor.

VI. RETIREMENT

A. WTS Pension Plan

1. Westinghouse Government Environmental Services Company LLC (WGES) is the majority owner of Westinghouse TRU Solutions LLC (WTS). The segment of the WGES business operated by WTS was previously operated as the "Waste Isolation Division" (WID) of WGES. The entire business operated by WGES, including what is now known as the Westinghouse Pension Plan for the benefit of many of its employees, including those now in the WTS segment. In anticipation of the divestiture of its industrial businesses, including what is now the WTS segment, and pursuant to an agreement with the DOE, CBS established the Waste Isolation Division Pension Plan (the WID Plan) as a separate defined benefit pension plan effective August 31, 1998, and transferred certain liabilities and assets from the Westinghouse Pension Plan to the WID Plan. When WGES acquired its business from CBS, it also acquired the WID Plan. In connection with that acquisition, the WID Plan was amended and restated effective April 1, 1999. WGES has continued to maintain the WID Plan for the benefit of the employees of its WID segment. With the transition of operations from WID to WTS, WGES will continue to provide a pension plan for employees of its WTS segment, but will change the name of the plan from the Waste Isolation Division Pension Plan to the Westinghouse TRU Solutions Pension Plan (the WTS Plan). Employees, excepting part-time employees or casual employees who are regularly scheduled to work less than 24 hours per week, are eligible to participate in the plan within the restrictions specifically defined in the WTS Plan document. The WTS Plan shall be separate from the Westinghouse Government Services Group Pension Plan, and its associated trust (the WTS Pension Trust) shall be separate from the Westinghouse Government Services Group Pension Plan Trust (the WGSG Pension Plan Trust) under the existing Westinghouse Government Services Group Master Pension Trust (the Master Trust). The WTS Plan shall include the WTS segment participants except those terminated vested, or retired prior to January 1, 1991. The terms and conditions of the WTS Plan, as set forth in the Plan document dated April 1, 1999, and amended December 30, 1999, and modifications thereof, are incorporated herein and made a part hereof as fully as if set forth in the Appendix A. Any revision or termination of the Plan, and modifications thereof, shall be subject to approval of the Contracting Officer.

WGES shall submit to the DOE copies of the pension plan documents and amendments thereto, the summary plan description, annual actuarial valuation, annual accounting report, annual IRS Form 5500 tax package concerning the WTS Plan and the periodic favorable IRS determination letter. The actuarial valuation report of the WTS Plan shall include a funding standard account, gain/loss analysis, itemization of amortization basis by source, and amortization schedule.

The plan sponsor will pay from the pension assets those administrative costs which are incurred under the WTS Plan, and which are payable from the WTS Pension Trust. The administrative costs incurred under the WID Plan which are not payable from the WID Pension Trust shall, if reasonable, be allocable to and allowable under this contract. DOE will reimburse WGES for IRS penalties and excise taxes allocable to the WID Plan only to the extent that they result from DOE actions or inaction. WGES shall submit to the Contracting Officer the annual benefit and administrative costs of the WTS Plan.

To maintain the separate WTS Plan.

- a. The DOE is responsible to the WTS Plan sponsor for reimbursement of any excess of liabilities over assets. Any excess of assets over liabilities are to the benefit of the DOE.
  - b. The normal costs, actuarial liabilities, and the required contributions will be computed on the basis of any individual actuarial cost method which is acceptable to the IRS and DOE. Required contributions shall be reimbursed by the DOE to the WTS segment for ultimate payment to the WTS Pension Trust.
  - c. The total cost of annual maintenance of the WTS Plan shall be allowable under and allocable to this contract.
2. In the event of completion of this contract or termination of the performance of the work thereunder in whole or in substantial part; and the absence of a successor contractor, the Contractor and the Contracting Officer shall meet to determine the fate of the plan. The preferred option will be a merger of the plan with another DOE-site plan sponsored by another DOE contractor. Such a merger shall involve a transfer of all assets and all liabilities of the plan to the other DOE-site plan and shall satisfy the requirements of A4.d below. the DOE will work

with the contractor on obtaining a waiver. Should such a merger prove to continue the plan as a wasting trust or to terminate the plan as specified in A4.a. below.

- a. The difference between the market value of the WTS Plan assets and the liability referenced above represents the net resulting adjustment of previously determined pension costs. Such net resulting adjustment shall be credited with simple interest at the three month Treasury Bill rate in effect at the date of the event for the period from the date of event to the payment of the adjustment to the appropriate party. Any net resulting adjustment due to the DOE under this paragraph A.2 shall be guaranteed by WGES assets.
  - b. If the WTS Plan assets are not sufficient to provide for such liabilities, DOE shall be responsible to fully and promptly reimburse the contractor for the additional contributions to the WTS Pension Trust required to eliminate the unfunded liability.
3. In the event DOE should enter into a contract with a replacement contractor for the purposes of performing all or a substantial part of the management and operation of the Waste Isolation Pilot Plant (WIPP) now performed by WGES under this contract, WGES shall assist in the necessary arrangements for the replacement contractor to assume all liabilities and all assets of the WTS Plan. For employees transferred to the replacement contractor, WGES shall assist the DOE in the calculation of participants' pension service time under the contract by carrying forward their WGES service time to the replacement contractor. Granting of prior WGES service credit by the replacement contractor shall not result in duplicate benefits for the same service time.
4. In the event of plan termination;
- a. Plan liabilities shall be determined in accordance with methods, assumptions and procedures acceptable to the Pension Benefit Guarantee Corporation (PBGC), and as agreed to by the parties. The Contract may satisfy plan liabilities to plan participants by an method acceptable to the PBGC, including the purchase of annuities or making lump sum distributions. If annuities are purchased, the Contractor shall, to the extent possible, obtain at least five insurance company bids on the open annuity market. Insurance companies bidding for this business shall satisfy Department of Labor standards and shall have an A.M. Best rating of at least A+.

Any assets remaining after full satisfaction of such plan liabilities (net of any excise and income taxes) ultimately shall be credited to the DOE under the contract. If plan liabilities exceed plan assets, DOE shall reimburse WGES the excess of plan liabilities over plan assets.

- b. If a partial plan termination occurs, as determined by the IRS, the affected participants will become 100 percent vested in their accrued benefits.
  - c. Whenever possible, if Plan termination or merger accompanies contract termination, WGES and DOE shall arrange for the transfer of the WTS Plan to a defined benefit plan of a successor contractor or to a separate contract administered by a financial institution.
  - d. In no event shall the merger of the WTS Plan and Trust with another pension Plan diminish the assets of the WTS Plan or change valuation and accounting procedures for those assets or the settlement procedures under paragraph A.2., paragraph A.3 or paragraph A.4 herein.
5. All costs incurred by WGES to effect events pursuant to subparagraphs A.2, A.3, or A.4 (above) shall be allowable under and allocable to this contract. These costs shall be separate from and in addition to the annual payment for general and administrative expenses provided to WGES under this contract.

B. Westinghouse Government Services Group Savings Plan

All employees are eligible to participate in the Westinghouse Government Services Group Savings Plan (the WGSG Savings Plan) immediately upon employment. An active participant may elect to contribute from 2 percent to 20 percent of base earnings, in increments of 1 percent, on an after-tax basis, a pre-tax basis, or a combination thereof. At the end of each calendar month, for each dollar an active participant contributes in that month on either an after-tax basis or a pre-tax basis, WGES shall contribute 50 cents to the participant's Employer Match Account, subject to a maximum employer contribution of 3 percent of the participant's base earnings for that month.

In the event of the completion of this contract, or termination of the performance of the work thereunder in whole or in substantial part, any funds not allocable to vested contract service of participants in the WGSG Savings Plan shall be credited to DOE. Thus, WGES shall credit to DOE non-vested DOE contributions for those employees who withdraw from the plan and all DOE

contributions paid towards periods beginning on or after the contract termination date. For periods beginning before the contract termination date, WGES shall submit to the DOE an annual accounting of such reductions.

While this contract is in force, WGES will provide DOE with all legally required filings, and an annual accounting of the number of participants, aggregate salaries, and aggregate forfeitures pertaining to the WID segment.

The terms and conditions of the WGSF Savings Plan, as set forth in the "Westinghouse Government Services Group Savings Plan dated April 1, 1999, and modifications thereof, are incorporated herein and made a part hereof as fully as if set forth in this Appendix A.

C. WTS Executive Pension Plan

1. WGES currently maintains a supplementary executive pension plan which provides certain individuals with pension amounts in excess of those provided by the various Pension plans sponsored by WGES and its predecessors. Benefits under this Plan are paid on a pay-as-you-go basis. Accrual of additional benefits under the Plan will cease effective July 1, 2001. No new participants will be eligible to participate in the Plan after February 1, 2001. The terms and conditions of the Plan are set forth in the Westinghouse Government Services Group Executive Pension Plan executive summary and plan description, which is incorporated herein and made a part hereof as fully as if set forth in this Appendix A. Any revision of the Plan, and modifications thereof, applicable solely to employees of the WTS segment, shall be subject to the approval of the Contracting Officer. Allocable cost of the WTS segment under this Plan shall be allowable under this contract. The WTS share of administrative costs incurred under the Plan shall be allocable under and allowable to the contract.

In implementing the foregoing, the parties agree that WGES shall determine the actuarial accrued liability for active and retired employees allocable to the WTS segment who are participants in the Plan by using the actuarial assumptions then being employed by the actuary in the annual valuation of the Plan. Such liability shall be based on benefits accrued based on service to the date of the event.

2. Such payments to the DOE, pursuant to the above paragraph C.1, shall be recovered by the DOE through reduction of payments or reimbursements otherwise due from the DOE to WGES

under this contract until such time as the payments due to the DOE have been fully liquidated, or in such other manner and over such period of time as WGES and the DOE may mutually agree.

D. Other Post-retirement Benefit Plans

1. Current Plans for Current Retirees

The WTS retirees, including pre-1991 retirees, will continue to participate in the existing plans, as set forth in the FY2000 Retirements Events Guide, which is incorporated herein and made a part hereof as fully as if set forth in this Appendix A. The government recognizes its responsibility for these costs, and funds them on a pay-as-you-go basis.

2. Contract Transition

Depending on the situation, the following procedures shall apply:

- a. No Replacement Contractor. In the event the contract expires or is terminated without a replacement contractor, the outgoing contractor shall continue as plan sponsor and administrator of existing benefit programs unless the DOE determines that it is not in the best interest of the Government.

In accordance with the DOE-approved contractor benefit plans, the outgoing contractor shall provide benefit continuation on a funding basis acceptable to the parties.

Negotiated arrangements may include, but are not limited to, any of the following items or combinations thereof:

- (1) A lump-sum payment by the DOE to the outgoing contractor
- (2) Paying a third party such as an insurer with DOE funds to guarantee benefit payments

(3) Continuing benefit payment obligations on a pay-as-you-go basis with DOE funds

- b. Replacement Contractor Situation. When there is a replacement contractor, WGES shall assist in the necessary arrangements for the replacement contractor to assume the post-retirement benefits liabilities for all active, retired, and service-eligible participants, as such liabilities exist at the time of transition to the replacement contractor. Nothing in this paragraph is intended to prohibit a replacement contractor from providing post-retirement benefits on different terms or at different levels following the transition. DOE will consider funding the post-retirement benefits by means of a VEBA or some similar method that will comply with any future changes in CAS regulations.

For purposes of this section, the post-retirement benefits liability shall be determined by the WGES actuary in accordance with the principles and methods of Financial Accounting Standard (FAS) 106, and assumptions, appropriate as the date of the contract transition, jointly agreed upon by WGES and the DOE.

VII. PAID LEAVE

A. Holidays

A total of ten (10) holidays will be observed annually, of which 9 (nine) of the days will be traditional scheduled holidays, and the tenth holiday will be a floating holiday. Employees will be paid for their regular scheduled hours at their base rate to include applicable night-turn bonus. The schedule of the nine holidays to be observed annually will be provided by the Contractor to the Contracting Officer, prior to December 15th of the year before the holiday schedule is to be effective. The tenth holiday will be taken as determined by each employee's individual preference and as mutually agreed-upon by the employee and their manager.

B. Vacation Eligibility Requirements

1. a. Employees will be entitled to vacation with pay (including shift differential which the employee would have received had he/she worked during the vacation period) on a calendar year basis hereinafter called the "vacation year" in accordance with the contractors vacation schedules. Any modifications to the vacation eligibility requires contracting officer approval as follows:

<u>Years of Service</u>	<u>Amount of Vacation</u>
After 30 days less than 1 year	40 hours
1 year accumulated service, but less than 6 years	80 hours
6 years but less than 7 years	88 hours
7 years but less than 15 years	120 hours
15 years but less than 20 years	160 hours
20 years but less than 30 years	200 hours
30 years or more	240 hours

- b. WTS employees are eligible to carryover up to 40 hours of earned vacation to the next calendar year. The vacation carryover will be administered by the contractor.

2. The vacation or vacation allowance in each vacation year to which an employee shall be entitled under the above schedule shall be equal to the totals of:

- a. The vacation to which the employee's continuous service as of the last scheduled workday in the last workweek of the immediately preceding calendar year entitled them, and
- b. Any additional vacation to which their continued accumulation of continuous service shall entitle them during the vacation year.

C. General Vacation Conditions

1. Vacation may be taken in minimum increments of one hour.
2. An employee who retires from active service has the option of taking vacation for which he/she is eligible prior to his/her retirement date or to receive vacation pay in lieu of time off.
3. If an observed holiday occurs during an employee's vacation period, the day will be paid as a holiday and will not be considered a vacation day.
4. It is the responsibility of management to see that all employees take these allotted vacations
5. When an employee is removed from the active roll for any reason, payment for vacation not taken for the current year will be made if the employee has qualified for it.
6. The Contractor may request employees to waive vacations due them when conditions make it necessary. In such cases, payment in lieu of vacation will be made at the end of the calendar year, with approval by the General Manager.
7. Unearned vacation shall not be advanced to employees, except as approved in advance by the Contracting Officer.

D. Basis of Vacation Payment

Vacation payments will be made on the following basis:

All payments will be based upon the greater of (a) the employee's regular rate in effect at the time the vacation begins, or (b) the employee's regular rate in effect during the last fiscal week worked by the employee during the year preceding the vacation year. However, if the employee's regular rate is increased during the vacation period, the rate shall apply from the effective date of the increase through the remainder of the vacation.

E. Occupational Disability Leave - Employees

An employee who is unable to perform work due to an accidental injury or occupational illness arising out of and in the course of employment may be entitled to benefits under Worker's Compensation. The Contractor may pay occupational disability leave as a supplement to any payments under these laws for such period of time that is consistent with the Contractor's established policies when, in the judgment of the General Manager, it is deemed advisable. Unless the prior approval of the Contracting Officer is received, no employee shall be granted occupational disability leave beyond that last day of the calendar month in which the completion of six (6) months of continuous total disability occurs.

F. Non-occupational Disability Leave

1. Occasional Absences

Exempt and nonexempt salaried employees are paid full salary benefits for short-term, occasional, non-occupational, disability absences. Absences are payable to the extent that extended salary payments, below, are applicable.

If the overall absentee rate (computed using Bureau of National Affairs (BNA) or Commerce Clearing House (CCH) methodology) exceeds 3.2% of base work hours for any fiscal year, this provision will be subject to discussion and re-negotiation.

2. Extended Salary Payments

- a. When an employee is absent from work for an extended period due to sickness or disability, salary payment shall continue for following periods:

Less than one year credited service - one week.

One year credited service - one month.

More than one year credited service - one month plus one additional month for each five years of credited service.

- b. The period for which salary payments are continued begins on the first regular working day on which the employee is absent and shall continue for one (1) calendar week or month (whichever applies) including Saturdays, Sundays, and holidays, from the date such absence begins.
- c. Reimbursement of extended salary payments beyond three months beyond the initial month requires approval by the Contracting Officer.
- d. Disabled employees are transferred to the Disability Roll at the expiration of the period they receive extended salary payments.

G. Military and Emergency Duty Leave

1. Training

Full time employees who are reservists in the armed forces of the United States or who are National Guard members and who have short-term military training obligations, such as annual training, will be granted fifteen (15) workdays of leave per fiscal year to satisfy their obligation. During this time, only the amount by which the employee's prorated salary exceeds the military base pay is reimbursable under the contract.

Military training in excess of fifteen (15) working days during a fiscal year will be granted as leave without pay or as vacation, at the employee's option.

2. Emergency Duty

Full time employees who are members of the National Guard and who are called for emergency duty in their state will be granted up to one hundred and sixty (160) hours of paid leave per fiscal year. During this time, only the amount by which the employee's prorated salary exceeds the military base pay is reimbursable under the contract.

3. Military Leave of Absence Benefits Provisions

- a. All time spent under the military leave of absence will be fully credited for purposes of pension calculations upon return to active employment with the Contractor.
- b. An employee contributing to the Westinghouse Pension Plan may continue to contribute while on military leave of absence.
- c. Medical and Dental Health Care coverage's cease as of the commencement date of the military leave of absence. Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation will apply as required by Federal Law.
- d. Medical and Dental benefits for covered dependents may be continued during the military leave of absence. The regular employee contributions, in advance, are required. Dependent life insurance benefits and family covered under the Personal Accident Insurance Plan may be continued during the military leave of absence period.
- e. Payment for unused earned vacation is allowable if made at the beginning of the employee's military leave.

H. Death-in-Family Leave

An employee who is absent from work because of a death in the immediate family (as defined by this Personnel Appendix A) will be paid for time lost, up to a maximum of three consecutive regularly scheduled workdays, except for in the case of a spouse, child or step-child a maximum of five consecutive regularly scheduled workdays will be paid for time lost.

I. Jury Duty or Attendance in Court

Salaried employees serving on jury duty or attending a proceeding of a court or governmental agency in response to a subpoena served on the employee in a case to which the employee is not a party, and in which the employee has no direct or indirect interest, shall be paid their regular salary. No deduction shall be made for amounts received from the court or agency. It is expected that such employees will report for their regular duties when temporarily excused from attendance.

J. Public Emergency Leave

Employees may be granted time off with pay during a public emergency which effectively prevents their attendance at work or the continuance of work in a normal and orderly manner. A public emergency includes either a natural disaster (such as fire, flood, earthquake), a man-made disaster (such as a demonstration, riot, or act of sabotage), or inclement weather. Authorization for time off with pay for such emergencies will be made by the General Manager with notice to DOE. If such time off with pay will exceed eight hours, DOE approval is required.

VIII. UNPAID LEAVE OF ABSENCE

A. Leave of Absence Schedule

Leave of absence applies to a continuous period of 30 days or more away from work where the intent is to reinstate the employee at the expiration of leave period.

1. A leave of absence may be granted for certain personal reasons in accordance with Company policy, as follows:

	<u>Maximum Leave Period</u>
Less than 1 year	None
1 to 2 years	1 month
2 to 3 years	2 months
3 to 4 years	3 months
4 to 5 years	6 months
5 years or more	1 year

2. Leaves of absence for education may be granted to pursue degrees in areas of benefit to the Company. Such leave may be granted when participation in the tuition refund programs is impractical. Education leave may be granted in one year periods, maximum, not to exceed three years total, provided the employee agrees to return to the employ of the Company.
3. Employees may also be granted leave to serve in elected or appointed public office, as governed by applicable laws.
4. All requests of leave are reviewed by the Human Resources Manager, considering reason for the request, the effect the leave will have on productivity, and the employee's performance record. Leave will not be granted to accept employment with another employer or enter self-employment.
5. However, leave without pay of over six months requires Contracting Officer approval

B. Unpaid Family and Medical Leave of Absence (UFMLA)

1. UFMLA may be granted to eligible employees for up to 12 weeks each year. The DOE reimbursable portion of this benefit will consist of up to 12 weeks employer paid contribution for medical care (health and dental) coverage for the qualified employee. Employees are eligible if they have worked for at least one year and for 1,250 hours or more during the previous 12 months.
2. Unpaid leave will be granted to care for the employee's child after birth, or placement for adoption or foster care; to care for the employee's spouse, son, daughter, or parent who has a serious health condition; or for the serious health condition that makes the employee unable to perform his or her job.
3. Each UFMLA request will be submitted in writing 30 days (or as soon as practicable) in advance to Human Resources and will include the employee's name, job title, reason for the absence, starting and ending dates of the absence, and the DOE reimbursable monthly cost for providing continuing group medical care benefits. At that time, the employee will be required to provide an advance medical certification for the person requiring the care and to sign an agreement of intent to return to work that will specify the expected date of return to work.
4. All other benefit accruals, excluding the first 29 days of service credit, will be suspended during the absence. The employee shall be restored to their original or equivalent position with the same pay and benefits that were in effect or accrued prior to the absence.
5. The allowable DOE reimbursed health care benefits will not be extended beyond 12 weeks. In cases where the UFMLA employee fails to return to work, the contractor will make good faith efforts to recover the employer's portion of the premium paid to maintain the employee's group health coverage.
6. The contractor will submit January and July semi-annual reports on UFMLA to the Contracting Officer for the prior six month period. The report will include: employee name, job title, reason for leave, date request approved or denied, start of the qualifying 12-month leave period, absence dates, individual accrued UFMLA leave totals, and cost to DOE.

C. Active Duty

1. Any employee who is drafted or volunteers in the armed services of the United States, in the time of national emergency, or who is called to active duty as a reservist, is considered to be on extended military leave without pay.

2. Reinstatement

Employees on military leave are entitled to veterans' re-employment rights as established by Federal Law.

IX. TRAINING AND EDUCATION

A. Employee Training

1. Training programs may be conducted at the Waste Isolation Pilot Plant Site or elsewhere, as required, to increase employee skills and efficiency, to develop techniques for solution of operating problems, and to prepare participating employees for increased responsibility. This will include training of a kind and nature generally equivalent to that provided in other organizational components of WTS.
2. Training programs may include, but are not limited to, workshops, job training, supervisory training, executive development, professional organizations, and seminars.

B. Educational Programs

1. Educational Assistance to Employee

WTS has a policy of encouraging employees to continue their formal education through realistic part-time study to improve their effectiveness in their present jobs and prepare themselves for positions of greater responsibility. The Educational Assistance Program includes:

a. Degree Programs

- 1) Advanced degree programs for all employees where that skill is beneficial to the career development in the DOE Contractor's organization.
- 2) Associate/Bachelor degree programs for those employees when the programs are either:
  - o Related to the employees present job or occupational field
  - o Related to specific needs that can be foreseen in the future

b. Single Courses for Management and Professional Personnel

- 1) Job-related courses which bear a concrete relationship toward maintaining or improving the employee's present job skill. These would include refresher courses for engineers seeking to qualify as registered professional engineers.
- 2) Courses which have a definite relationship with the next job in the logical development of an employee's career.
- 3) Employee participation is strictly on a voluntary basis, and all classroom work, homework assignments, and related activities must be done outside the employee's working hours.

c. Government Financial Assistance

If other Government financial assistance—such as G.I. Bill—is available, it shall be used first. The Contractor will reimburse any authorized cost portion not covered by such sources, at successful completion of the courses

2. Educational Opportunity Program

- a. WID, through the Educational Opportunity Program, will refund tuition and compulsory fees to eligible employees and former eligible employees, who complete a training course that relates to maintaining or improving the employee's skills in his/her job, or contributes to the career development of the employee.
- b. To be eligible, an employee must obtain written approval for participation in the training from the immediate supervisor and educational administrator. Evidence of satisfactory completion of the training course and proof of payment must be submitted to obtain reimbursement.

X. EMPLOYEE PROGRAMS

A. Physical Examinations

Medical costs incurred by the Contractor are allowable for pre-placement, fitness for duty, termination and return from disability. Medical costs for periodic voluntary health examinations are allowed as follows:

1. Age 50 and older, one (1) examination every two (2) years
2. Age 40 to 49, one (1) examination every three (3) years
3. Under Age 40, one (1) examination every five (5) years

B. Medical Program

A dispensary is provided for medical care of occupational illness and injuries and to provide relief for minor physical complaints of employees. A registered professional nurse will be in attendance during first shift working hours and a Emergency Service Technician on 24-hour call.

C. Clothing and Equipment

The Contractor will furnish employees with safety shoes, safety glasses, special and/or protective equipment, and specified clothing for use at the job site when, in the opinion of the Contractor, working conditions are such that special protective measures are necessary to promote safety, sanitation and protection. The original cost of the equipment and apparel as well as the laundering and maintenance are allowable cost.

1. An employee who is furnished and/or in control, of such items may be required to pay for any loss, damage, or destruction thereto that is clearly attributable to the employee's negligence or lack of reasonable care.
2. Personal items damaged as a result of accident or other uncontrollable occurrence are reimbursed to employees only upon approval by the Manager, Human Resources.

D. Invention and Patent Awards

The cost of Invention and Patent Awards made by the Contractor's Patent Committee in accordance with the following will be allowable:

1. Payment for an "Invention Award" of \$300 is made to a sole inventor or, in the case of a joint invention, \$500 divided among the joint inventors, when authorized by the Contractor's Patent Committee. The "Invention Award" will be paid to:
  - a. Contractor employees,
  - b. Annuitants serving the Contractor as consultants,
  - c. Persons separated from the Contractor's payroll for any reasons including retirement when the invention or discovery was made or conceived prior to the date of separation or retirement.
2. Payment of a "Patent Award" of \$300 is made to each inventor upon the issuance of a U. S. Patent. A Patent Award for multiple inventors of a single patent shall be limited to a total of \$2,500 or as otherwise approved by the Contracting Officer. The "Patent Award" will be paid only to Contractor employees, annuitants and annuitants serving the Contractor as consultants. Patents issued to the U. S. Government on these inventions will be counted in determining eligibility for "Patent Awards" as will "allowed" patent applications which do not issue because of security classifications.
3. The Patent Committee may authorize payment of a "Meritorious Disclosure Award" in the amount of \$100 to a single inventor or \$150 to be divided among two or more inventors. The criteria to receive and be eligible for the award is the following:
  - a. The intent of the disclosure must contain an original inventive idea that solves a problem.
  - b. The disclosure must have been dispositioned by the committee as "not to file at this time."

- c. The Patent Committee must decide unanimously to award the inventor(s) a Meritorious Disclosure Award.
  - d. Recipients of the award must be either employees or retirees of WTS at the time the award is to be presented.
- 4. When an invention is deemed to have made a major contribution to the work program, payment of a "Special Patent Award" may be made. The Contracting Officer's approval of any such payments will be required on an individual basis.
  - 5. In addition to financial awards, inventors are presented with certificates for the 5th, 10th, and 25th patent issued and a plaque for the 50th patent issued.
  - 6. Awards are paid to the individual over and above any other payment for salaries, etc.

3. Business and Staff Meetings

The costs associated with business and staff meetings, training seminars, and/or business conferences, held at locations other than WIPP facilities, relating to DOE programmatic business shall be allowable provided such costs are incurred in accordance with WID established policies.

3. Miscellaneous Personnel Items

- 1. The Contractor is authorized to subcontract for the operation of the cafeterias for the WIPP facilities and to contract for the installation and servicing of vending machines/canteens at the site. These cafeteria and vending services shall be available to all personnel working at the facilities.

If the operation of a cafeteria/lunchroom results in a net expense, income from the vending machine subcontract will apply to the extent necessary to defray the cost of the cafeteria/lunchroom operation. Any net administrative costs of providing these services are allowable under this contract.

The Contractor will not permit the operation of any cafeteria/ lunchroom/vending services for the benefit of any employee or employee association. Where applicable, provisions of the Randolph-Shepherd Act will apply to vending/canteen operations.

2. Bulletin boards are used as a medium for informing employees promptly as to changes in policy, procedure, and matters of general interest. The Contractor provides uniform bulletin boards for posting such notices. Control of the material displayed is the responsibility of Human Resources.

Employee handbook(s) will be developed and used to codify responsibilities, rights, and benefits applicable to all WTS employees at WIPP.

Additional communications media to be used to keep employees advised include, but are not limited to, general mailings to employees and their families at their homes. The cost of providing the communications listed above is allowable.

3. The cost of service awards is allowable through a fund which shall be established annually with the approval of the Contracting Officer. Any changes in the awards, price lists or the WTS service recognition program shall be furnished to the Contracting Officer.
4. The cost of employee safety programs, awards for continuous service or perfect attendance and management awards shall be allowable. The nature and extent of such programs shall be discussed in advance with the Contracting Officer and the total amount annually budgeted for such programs shall be subject to the approval of the Contracting Officer.
5. The Contractor will provide on a limited basis transportation to the WIPP site to employees to decrease the number of vehicles on the highways and conserve energy. Transportation will include, but not be limited to, vans and/or buses.
6. Reasonable costs of an Employee Assistance and Wellness Program, providing counseling and referral for outside assistance in dealing with personal problems of various kinds shall be allowable. This program shall be limited to program activities related to substance abuse, stress management, smoking cessation, financial management, family, live-in and marital counseling.

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The Contractor shall submit an annual budget for the outside assistance services that will be provided each fiscal year for review and approval by the Contracting Officer.

XI. TRAVEL AND RELOCATION

A. General Policy

Allowable costs for travel expenses of employees shall include transportation and reasonable actual charges for lodging, meals, tips, and miscellaneous personal expenses, and other necessary business expenses as described in this article. However, all charges claimed by an employee for lodging and transportation by common carrier shall be supported by receipts. Where applicable, as described below, allowable costs cover the incurred moving expenses of newly-hired or reassigned employees and their family members. All foreign travel, as may be required in the performance of this contract, shall require the prior written approval of the Contracting Officer on a case-by-case basis.

B. Regular Business Transportation Allowance

1. Allowable costs for regular business travel include the use of taxis, limousines, personal automobile, rent-a-car, rail, bus, and commercial airline. (Regular business travel does not include daily travel between the employee's place of residence and his/her assigned work site.)
  - a. The allowance for the use of personal automobile on official business shall not be higher than the rate authorized in 41 Code of Federal Regulations Chapters 301-304. Such allowance shall be based on the mileage between the authorized points of travel as listed in the Rand-McNally standard distance charts.
  - b. Additional allowances shall be made for daytime and overnight parking and for ferry, toll road, tunnel, and toll bridge charges. In the event two (2) or more persons travel in one (1) automobile, only one (1) mileage allowance will be paid.
  - c. The allowance for an employee on official travel who uses a privately-owned automobile for the employee's own convenience in lieu of commercial transportation will be air coach fare (jet fare where applicable). Lodging and subsistence allowances will be limited to the time required as if the employee had used air transportation.

- d. Allowable costs for the rental of automobiles shall be limited to the extent that it is advantageous to conduct of work to be performed. Compact automobiles are to be used whenever they are available and accommodate the needs of the number of travelers involved.
- e. Allowable costs for rail travel will be actual expenditures for first class fare, pullman, including the cost of accommodations in excess of roomette fares when no roomettes are available.
- f. Less than first-class air accommodations will be used for all airline travel except when less than first class accommodations are not reasonably available to meet the necessary duty requirements. For example, less than first-class accommodations are considered not reasonably available where less than first-class would (a) require circuitous routing, (b) require travel during unreasonable hours, (c) greatly increase the duration of the flight, (d) result in additional costs which would offset the transportation saving, or (e) offer accommodations which are not reasonably adequate for the medical needs of the traveler.
- g. In addition to those mentioned above, reasonable charges, if incurred in connection with the work under the Contract, will be allowed for limousine, taxi, bus, streetcar, subway fares, baggage (including excess baggage charges), telephone, telegraph costs, and such other charges as renting rooms, stenographic service, duplicating charges, and other similar items required for effective work performance. In addition to expenses incurred for telephone calls made by an employee for official business purposes, telephone expenses may also include a reasonable number of telephone calls required by such other circumstances as: (1) illness in the family, (2) bad weather conditions justifying concern by the employee's family as to the employee's safe arrival, (3) last minute changes in plans, (4) arrangements for meeting the employee upon return, and (5) long absences from home.

2. Employee Lodging, Meals, and Incidental Business Travel Expenses

a. Except as provided in Subsection b. below, payments to an employee on company business travel for lodging, meals, and incidental expenses (as defined in the regulations cited in (1) through (3) below) shall be an allowable cost only to the extent that they do not exceed on a daily basis, the maximum per diem rates in effect at the time of travel as set forth in the:

- (1) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States;
- (2) Joint Travel Regulations, Volume 2, Department of Defense (DOD) Civilian Personnel, Appendix A, prescribed by the DOD, for travel in Alaska, Hawaii, and the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
- (3) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowance for Foreign Areas." prescribed by the Department of State, for travel in areas not covered in Paragraphs (1) and (2) of this Section 2.

b. In special or unusual situations, contractor employees may be paid for actual expenses in excess of the above referenced maximum per diem rates provided such payments do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in Subsection a.(1), (2), and (3) above and all of the following conditions are met:

- (1) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in Subsection a. above exists.
- (2) A written justification for payment of the higher amounts is approved by the General Manager, or his designee.

- (3) The Contractor is required to obtain advance approval from Contracting Officer, if it becomes necessary to exercise the authority to make payments based on the higher actual expense method repetitively or on a continuing basis in a particular area.
  - (4) Documentation exists to support the payment of actual expenses incurred and each employee expenditure in excess of \$25.00 is supported by a receipt. The approved justification and, if applicable, any required Contracting Officer advance approvals must also be retained.
- c. Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates and the definitions of lodging, meals, and incidental expenses are applicable to this contract.
  - d. Payments for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable cost to DOE.
3. Transportation, Lodging, and Subsistence Allowance (Exempt Interviewees)

Transportation, lodging, and subsistence expenses incurred by persons authorized to travel for the purpose of being interviewed for an exempt position, including spouse of prospective employee who is being considered for a key position, shall be allowable as set forth in this Section B., except that the allowances provided in Section B., Paragraph 1.g., shall be limited to limousine, taxi, bus, streetcar, and subway fares only.

C. Allowable Expenses in Connection with Exempt New Hires and Transfers

It is the intent of the parties to this Contract to apply the relocation policy as contained in this Section, to the extent herein provided, for the determination of allowable relocation costs incurred by all exempt employees and, where specifically authorized by the Contracting Officer, nonexempt employees in critical occupations, who are assigned to work under this Contract for a period of not less than 12 months.

1. Advance Trip

Allowable costs will include the costs of one advance trip for an employee who is to be transferred in order to search for suitable housing. The reasonable cost of transportation for the employee and spouse and for expenses enroute and at the new location shall be allowable in accordance with the policies set forth in Section B., above. In the event that a transferring employee is requested to report for work on such short notice that an advance trip cannot be taken, the cost of a trip for the spouse to join the employee and search for housing subsequent to the employee starting work may be allowed as an advance trip.

2. Transportation, Lodging, and Subsistence Allowance

- a. Transportation, lodging, and subsistence expenses incurred during travel and relocation by the employee and his/her immediate family shall be allowable as set forth in Section B., above. When travel is by personal vehicle, expenses shall be based upon a minimum travel of 400 miles per day, except for unavoidable delays, by the most direct and practical route.
- b. Except as otherwise approved in writing by the Contracting Officer in special cases, the payment of the aforementioned lodging and subsistence allowances for expenses in the case of employees and their immediate family members may continue after arrival at their assigned work locations for a period not to exceed 60 days for the employee and 45 days for the spouse and dependents, less the time spent on advance trips pursuant to C.1. above.
- c. Where an employee has been required to report for work under this Contract on such short notice that relocation of dependents and household goods is of necessity delayed, the transferee may be authorized one return trip to the point from which transferred to effectuate the move and attend to necessary personal matters. Under such conditions, the cost of the trip shall be limited to transportation expenses only.

3. Shipment of Household Goods and Ordinary Personal Effects

Actual and reasonable charges in connection with the shipment and temporary storage in transit of household goods and personal effects of employees moving to their assigned work locations are allowable. Such charges will include the cost of:

- a. Packing, crating, and unpacking.
- b. Charges for containers.
- c. Insurance up to \$30,000 value on household goods and personal effects while in transit and storage.
- d. Storage not to exceed sixty (60) days either at the point of origin or at the destination except as otherwise approved by the Contracting Officer.
- e. Transportation of household goods and personal effects, not to exceed 18,000 pounds, between point of origin and destination including transportation to and from points of storage.
- f. Shipment of one automobile, if two or more are involved, or a mileage allowance for the automobiles at the rate set forth in Section XI.B.1.a., whichever is less, except in exceptional cases with approval of the Contracting Officer. Such mileage allowance shall be based on the miles between the authorized points of travel as listed in the Rand-McNally standard distance charts.

4. Movement by Trailers and of Mobile Homes

a. Movement by Trailer

The actual cost of moving personal and household effects in a private or rented truck and/or trailer at a rate not to exceed the cost of moving such items by common carrier based upon weight certification by the employee and approved by the Contractor. Weight of the truck and/or trailer shall not be included in such weight certification.

b. Movement of Mobile Home

The cost of moving an employee's mobile home will be allowed in accordance with the following:

- (1) When the employee elects to have the employee's mobile home relocated by a professional moving agency, the actual cost of transporting it will be allowed except for cost incurred for dismantling awnings and disconnecting water and sewer pipes.
- (2) If the employee elects to tow the mobile home with the employee's own car, the employee may be allowed a rate not higher than the rate authorized in 41 Code of Federal Regulations Chapters 301-304 per mile for driving the employee's car.
- (3) The allowances specified above will be made in lieu of any payment for movement of household goods or personal property.

5. Sale of Home

a. The following costs are allowable provided the sale is consummated within twelve months after date of transfer or hire.

- (1) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incidental to the disposition of actual residence owned by the employee when notified of transfer, except that these costs when added to the costs described in (2) below shall not exceed 14% of the sales price of the property sold.
- (2) Continuing costs of ownership of the vacant former actual residence being sold, such as the maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, after settlement date or lease date of new permanent residence, except

that these costs when added to the costs described in (1) above, shall not exceed 14 percent of the sales price of the property sold.

b. WTS Home Purchase Program

A transferred exempt employee who owns his/her own home at the location from which he/she is to be transferred may, within the established policy of the Contractor, participate in the Corporation's Home Purchase Program. Costs incurred under the WTS Home Purchase Program shall be limited to 14 percent of the sales price of the home.

c. Expenses Incident to Purchase of Home

- 1) An employee who owned a home at the old work location and who purchases a home at the new work location within twelve months from date of transfer shall be reimbursed for those expenses listed below. The amount allowed for each item shall be the actual expenses incurred, or the maximum amount indicated, whichever is less, providing the incurrence of such expenses is dictated by local custom and practice.

Reimbursement may be made to employees who did not own a home at the old location if the WTS General Manager finds that failure to own a home at the old work location was because of circumstances beyond the employee's control. For mobile homes refer to Paragraph 7 below.

- (a) Title Search and Insurance of Abstract of Title - Not to exceed the standard title charges for such services in the area.
- (b) State or Local Realty Transfer Stamps - Not to exceed the standard statutory rate for the municipality in which the home is located.
- (c) Survey
- (d) Attorney's Fees

- (e) Miscellaneous Settlement Cost
- (f) Recording Fees - Not to exceed the standard charge established by the local recorder's office for recording the statutory form of deed and mortgage.
- (g) Mortgage Appraisal Fee
- (h) Credit Report for Mortgage
- (i) Fee for Loan Application - Not to exceed one percent of the new mortgage amount or the average charged by three leading lending institutions in the area in which the home is located, whichever amount is higher.
- (j) Lump Sum Closing Costs - In geographic areas where it is customary to pay a lump sum in lieu of the above closing costs. Not to exceed the average charged by three leading lending institutions in the area in which home is located.

- 2) Total allowable expenses involved in the purchase of a home shall not exceed five percent of the purchase price of the home.

6. Lease Cancellation

A new hire or transferred employee who leases a residence at the location from which he/she is to be transferred may be reimbursed the costs of canceling an unexpired lease, up to six months. Reimbursement for cancellations in excess of six months shall require approval of the Contracting Officer.

7. Mobile Homes

a. Sale of Mobile Home

- (1) Mobile home and lot on which it is located. Both owned by employee—eligible for Home Purchase Plan, as set forth in Section C.5.b., above, or reimbursement for selling expenses listed in Section C.5.a., above.
- (2) Mobile home owned by employee but located on leased lot (most mobile home parks)—not eligible for Home Purchase Plan.

Reimbursement for selling costs limited to actual costs incurred in selling mobile home or eight percent of sales price, whichever is the lower.

- b. Lease cancellation of mobile homes and/or lots reimbursement shall not exceed one month's rental charge.

8. Miscellaneous Moving Expenses

Employees may be reimbursed for other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit. Amounts to be reimbursed shall not exceed the employee's actual expenses, or in lieu of documented expenses a flat amount not to exceed \$350 for an employee with no dependents or \$700 for an employee with dependents, may be allowed in lieu of actual costs.

9. Unallowable Costs

The following types of costs are not allowable:

- a. Loss on sale of a home.
- b. Continuing mortgage principal payments on residence being sold.

- c. Costs incident to acquiring a home in a new location as follows:
  - (1) Real estate brokers fees and commissions;
  - (2) Cost of litigation;
  - (3) Real and personal property insurance against damage or loss of property;
  - (4) Mortgage life insurance;
  - (5) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence (however, cost of a mortgage title policy is allowable); and
  - (6) Property taxes and operating or maintenance costs.
- d. Payments for employee's income taxes or social security taxes incident to reimbursed relocation costs.
- e. Payments for job counseling and placement assistance to employee spouses and dependents that were not employees of the Contractor at the old location.
- f. Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

D. Cost Recovery

If relocation costs for an employee have been allowed and the employee resigns within 12 months for reasons within the employee's control, the Contractor shall make a good faith effort to recover such relocation costs from the employee and credit them to the contract.

E. Allowable Expenses in Connection with Temporary Assignments

Exempt employees, and where specifically authorized by the Contracting Officer, nonexempt employees in critical occupations, may be placed on temporary assignments to work under the Contract. Allowable costs in such cases will be as follows:

1. Temporary Assignments of Less Than Six Months

Transportation, lodging and subsistence allowances for the employee only, as provided in Section B., above, for travel to and from the point of a temporary assignment. Expenses for an employee's immediate family will not be allowed. However, the employee will be allowed transportation costs for a reasonable number of trips to visit the employee's family as approved by the Contractor's top manager or the transportation costs for one member of the employee's immediate family to visit the employee at the temporary location in lieu of such approved trip provided the cost of such in lieu of trip will not exceed the cost that would have been incurred had the employee made the trip to visit the family.

2. Temporary Assignments of Six Months or More

- a. Temporary assignments contemplated to be of 6 months or more in duration shall be subject to Contracting Officer approval.
- b. Transportation, lodging and subsistence allowances as provided in Section B. for the employee whose immediate family does not accompany the employee on the assignment.
- c. For an employee without immediate family or an employee whose family accompanies the employee on the assignment, transportation, lodging and subsistence allowances, as provided in Section B. for the employee and immediate family for travel to and from the point of a temporary assignment. Payment of said allowances may continue after arrival of the employee and immediate family until they can move into reasonably adequate housing or until thirty (30) days have elapsed after arrival, whichever occurs first.

- d. Commencing with the day the employee and immediate family move into reasonably adequate housing or thirty (30) days after their arrival at the new location, whichever occurs first, a monthly allowance not to exceed that approved by the Contracting Officer may be paid to the employee during the applicable period; provided, however, that in the case of an employee without immediate family, the allowance will be a lesser amount than that of an employee and immediate family and shall be approved by the Contracting Officer. In determining the amount of the allowance, the Contractor shall use reasonable judgment in determining whether rental income, if any, from the employee's permanent home for the period of the temporary assignment should be credited against the amount otherwise authorized in individual cases.
  
- e. The cost of shipment of a limited amount of required household goods and personal effects to the point of assignment and return.
  
- f. Subject to prior approval of the Contracting Officer, employees placed on temporary assignment of not less than 12 months may be reimbursed costs associated with the sale of their home in conformance with the provisions contained in Section C., Subsections 5. or 7. of this Article XI, when the following circumstances are present:
  - (1) The employee is to be permanently transferred to a new duty station for the performance of work under this Contract upon completion of his/her temporary duty assignment and will not be returned to the duty station from which the employee was temporarily assigned.
  - (2) No costs associated with the sale of a home that may be acquired during the temporary assignment period shall be allowable.
  
- g. Other business expenses, as required, as set forth in Paragraph 1.g. of Section B.

XII. COMMUNITY PROGRAMS

The Contractor may make individual employees available to work with or for governmental, quasi-governmental, and other organizations in the southeastern New Mexico area toward achieving civic goals (e.g. Bond drives, charitable drives (e.g., United Way), participation in energy-use reduction studies, city councils, and school boards). Participation in activities of service organizations, will not be included under this heading.

The Contractor may also conduct appropriate community relations activities for the purpose of assisting in the recruitment and retention of qualified personnel. Examples of programs which come under this provision are exhibits at science and technical shows, universities, career fairs, and related activities; slide presentations to special interest groups showing opportunities in energy fields and at the site in particular; on-site tours for local organizations; and presentations to enhance interest in technical careers. The Contractor is authorized to conduct, participate in, and support events sponsored by an Equal Employment Opportunity (EEO) Steering Committee to educate the WIPP and community on issues dealing with a culturally diverse population; to promote a quality work-life environment by providing information to educate and encourage women in the workplace; and to remove discriminatory stereotypes. These events, such as Women's Career Day and Cultural Awareness Week, include award items for speakers and chairpersons as well as an honorarium and expenses for the keynote speakers.

The salaries, wages and fringe benefits of employees while engaged in such approved activities will be allowable costs. Any commitment of labor will have the prior approval of the Contractor's General Manager. Any open activity, other than bond drives and United Way drives, that requires more than 40 hours per employee in a fiscal year will require Contracting Officer approval.

XIII. SPECIAL EMPLOYEE PROGRAMS

A. Loaned Employees

1. The contractor may, from time to time, loan the services of full-time employees employed in the performance of DOE contract work, for temporary assignment to related parts of the corporation at locations other than the WIPP for work which is not in the performance of the contract as provided herein. Such loan of employees will not interfere with the contractor's ability to perform contract work, and will require prior approval of the Contracting Officer for thresholds above \$10,000, per person per year.
2. The contractor shall reimburse the government for the salaries and travel expenses of such loaned employee for the time they spend away from their normal duty under the contract. It is understood that the term "salaries," as used herein, shall include base salary and the fringe rate in place at the time of the transaction.

B. Borrowed Employees

1. The contractor may, from time to time, borrow the services of full-time employees from corporate locations other than the WIPP for temporary assignment to work which is in performance of the contract as provided herein. Such borrowed employee will enhance the contractor's ability to perform contract work, and will require prior approval of the Contracting Officer for thresholds above \$10,000, per person per year.
2. The contractor shall be reimbursed for the salaries and travel expenses of such borrowed employees for the time spent performing contract work. It is understood that the term "salaries," as used herein shall include base salary and the fringe rate in place at the time of this action.

**AMENDMENT OF SOLICITATION / MODIFICATION OF CONTRACT** | 1. CONTRACT ID CODE | PAGE 1 OF 1 PAGES

2. AMENDMENT/MODIFICATION NO. <b>A003</b>	3. EFFECTIVE DATE <b>See Block 16C</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY <b>U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400</b>		7. ADMINISTERED BY (If other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC 407 West Greene Street Carlsbad, NM 88220</b>	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
	10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>
10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS; IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY) <b>X CLAUSE NO. 191, OBLIGATION OF FUNDS (APR 1994) (MODIFIED)</b>

E. IMPORTANT: Contractor  is not,  is required to sign this document and return **3** copies to the issuing office

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

**The Department of Energy hereby revises the Obligation of Funds as follows:**

Funds Obligated through Modification No.	<b>A001*</b>	<b>\$ 30,996,356.00</b>
Funds Deobligated by this Modification No.	<b>A003-</b>	<b>3,350.00</b>
Funds Obligated since Inception of Contract		<b>\$ 30,932,006.00</b>

**\*M002 – Administrative Modification**

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) <b>Darold G. Haug</b>	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>Michael J. Fietze, Contracting Officer Management and Operating Contracts Division</b>
15. BY Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"	16. BY Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"
15C. DATE SIGNED <b>3-01-01</b>	16C. DATE SIGNED <b>3/6/01</b>

**AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT**      1. CONTRACT ID CODE      PAGE 1 OF 1 PAGES

2. AMENDMENT/MODIFICATION NO. <b>A004</b>	3. EFFECTIVE DATE <b>See Block 16C</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY <b>U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400</b>		7. ADMINISTERED BY (If other than Item 6)      CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC 407 West Greene Street Carlsbad, NM 88220</b>	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
	10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>
	10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>
CODE	FACILITY CODE

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

**12. ACCOUNTING AND APPROPRIATION DATA (If required)**

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS:  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): <b>X      CLAUSE NO. I 91, OBLIGATION OF FUNDS (APR 1994) (MODIFIED)</b>

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_\_\_ copies to the issuing office

**14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)**

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u>A003</u>	\$ <del>30,932,006.00</del>
Funds Obligated by this Modification No.	<u>A004</u>	<u>24,282,574.89</u>
Funds Obligated since Inception of Contract		\$ <u>55,214,580.89</u>

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>Michael G. Loera, Contracting Officer Management and Operating Contracts Branch</b>		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED <b>23 MAR 01</b>
BY _____ (Signature of person authorized to sign)		BY _____	

2. AMENDMENT/MODIFICATION NO. <b>A005</b>	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400		7. ADMINISTERED BY (If other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC 407 West Greene Street Carlsbad, NM 88220</b>	9A. AMENDMENT OF SOLICITATION NO.
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Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS:  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF
D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): <b>X CLAUSE NO. 191, OBLIGATION OF FUNDS (APR 1994) (MODIFIED)</b>

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u>A004</u>	\$ <u>55,214,580.89</u>
Funds Obligated by this Modification No.	<u>A005</u>	\$ <u>8,142,971.76</u>
Funds Obligated since Inception of Contract		\$ <u>63,357,558.65</u>

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>James L. Robbins, Contracting Officer Management and Operating Contracts Branch</b>
15B. CONTRACTOR/OFFEROR BY _____ (Signature of person authorized to sign)	15C. DATE SIGNED
	16C. DATE SIGNED <b>4/4/01</b>

**AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT** 1. CONTRACT ID CODE PAGE 1 OF 4 PAGES

2. AMENDMENT/MODIFICATION NO. <b>M006</b>	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY <b>U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400</b>		7. ADMINISTERED BY (If other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220</b>	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
	10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>
	10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>

CODE	FACILITY CODE
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**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS; IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: <b>X Public Law 95-91 and Other Applicable Law</b>
D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):

E. IMPORTANT: Contractor  is not,  is required to sign this document and return **3** copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

See Page 2.

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
15B. CONTRACTOR/OFFEROR BY: Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"	16B. UNITED STATES OF AMERICA BY: Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"
15C. DATE SIGNED	16C. DATE SIGNED

1. Section B, Subsection B.2, ESTIMATED COST, MAXIMUM AVAILABLE FEE, AND AVAILABLE FEE, is hereby deleted and replaced with the following new Subsection B.2:

**B.2 ESTIMATED COST, MAXIMUM AVAILABLE FEE, AND AVAILABLE FEE**

(a) Estimated Cost

- (1) The transition period (February 1, 2001 through January 31, 2001) will be performed at no cost to the Government. There will be no fee paid for the transition period.
- (2) The Estimated Cost of the Fiscal Year (FY) 2001 period of performance is **Exemption 4**

(b) Fee:

- (1) The Estimated Fee Base as defined in Department of Energy Acquisition Regulations (DEAR) 970.15 for each year of the contract, including Option Periods, is **Exemption 4**. The Maximum Available Fee for the term of this contract (February 01, 2001 through September 30, 2005) is hereby established as **Exemption 4**. The Maximum Available Fee for the Option Periods is **Exemption 4**.
- (2) The Maximum Available Fee for the five-year term of this contract is based on a calculated fee for FY2001 of **Exemption 4** and a calculated fee of **Exemption 4** for FY 2002 through FY 2005. The Maximum Available Fee for the Option Periods is based on a calculated fee of **Exemption 4** for FY 2006 through FY 2010.
- (3) For the purpose of determining adjustments to fee, the fee amount of **Exemption 4** shall serve as the Maximum Available Fee for FY 2002 – FY 2005 and Option Periods FY 2006 – FY 2010 unless the Estimated Fee Base for a given fiscal year deviates by more than plus or minus 15% from the Estimated Fee Base set forth in (b)(1) above.
- (4) In the event the Estimated Fee Base deviates for any fiscal year more than plus or minus 15% from the Estimated Fee Base (set forth in (b)(1) above), the Contractor agrees to negotiate with the U.S. Department of Energy (DOE) an equitable adjustment to the Maximum Available Fee amount to reflect the impact of such deviation. The new Maximum Available Fee for

that fiscal year will be the amount calculated by DOE in accordance with DEAR 970.15 (consistent with the FY 2001 fee computation methodology), multiplied by <sup>Exemption 4</sup> The Maximum Available Fee for the five-year term or Option Periods will be adjusted as a result of any yearly adjustment. In the event the parties are unable to reach agreement on the Maximum Available Fee amount, the Government reserves the right to unilaterally establish the Maximum Available Fee amount.

- (5) The Available Fee for FY 2001 - FY 2005 and Option Periods FY 2006 – FY 2010 will be negotiated annually (or any other period as may be mutually agreed to between the parties) between the Contractor and the Government. The Available Fee will be equal to or less than the Maximum Available Fee set forth in (b)(1) above. The Available Fee shall be established considering the level of complexity, difficulty, cost effectiveness, and risk associated with specific objectives/incentives defined in the Performance Evaluation and Measurement Plan (PEMP), including work which may involve multiple-site taskings/objectives. Higher or lower levels of complexity, difficulty, cost effectiveness, and risk will correspondingly allow a higher or lower available fee. In the event the parties are unable to reach agreement on the Available Fee amount, the Government reserves the right to unilaterally establish the Available Fee amount. Available Fee will be that fee set forth in the PEMP and available for the Contractor to earn through successful performance.
- (6) Multiple-year Performance Based Incentives (PBIs) shall be utilized as defined in the PEMP. The Maximum Available Fee for the five-year term <sup>Exemption 4</sup> shall be available for Multiple-year and annual PBIs. The Maximum Available Fee for the five-year term will be allocated and made available for earning by the Contractor during the contract term through assignment of fee to PBIs. An “unallocated” pool of fee will be maintained to account for fee that has not been assigned to PBIs. Fee which is unearned by the contractor as a result of cancellation or modification of a PBI will be either allocated to another PBI or placed in the unallocated fee pool for future allocation. As part of the annual fee negotiations, the parties agree to in good faith allocate the unallocated fee to meaningful work efforts during the term of the contract. Fee from the PBIs which is unearned due to nonperformance of the performance incentive requirements set forth in the PEMP shall not be returned to the unallocated fee pool but shall be forfeited.
- (7) Modification to a PBI is defined to include, but not be limited to: date extensions, quantity/quality changes, work scope replacement, any

requirements changes, baseline changes, or cancellation in total or in part. Requirements should not be relaxed unless changes are clearly outside the control of the Contractor, or if such relaxation is determined to be in the interest of the government. Baseline Change control procedures shall be followed to change PBIs.

Changes to PBIs may be negotiated in the following circumstances:

- In the event of legal or regulatory action by a State or Federal agency, or any intervening party, that prevents the achievement of a performance measure;
- An event or condition comes into force that prevents the Contractor from performing or achieving a specific performance measure, when such events or conditions are outside the control of the Contractor.

(8) There will be no base fee under this Contract.

2. Section J, Appendix F, Key Personnel, is hereby modified to change the name of the General Manager from Henry F. (Hank) Herrera to John Lee.
3. The Contractors address is hereby changed to: P.O. Box 2078, Carlsbad, NM 88220

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE 1 OF 2 PAGES
2. AMENDMENT/MODIFICATION NO. <b>M007</b>	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY <b>U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400</b>		7. ADMINISTERED BY (If other than Item 6)		CODE
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220</b>			9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			10A. MODIFICATION OF CONTRACT/ORDER NO. <b>DE-AC04-01AL66444</b>	
			10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>	
CODE	FACILITY CODE			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS;  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

**X Public Law 95-91 and Other Applicable Law**

D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):

E. IMPORTANT: Contractor  is not,  is required to sign this document and return **3** copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

See Page 2.

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR BY	15C. DATE SIGNED	16B. BY	
Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"		Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"	

1. Section H, Subsection H.25 Travel Restrictions, paragraphs (a) and (b), are hereby modified to read as follows:
  - (a) The parties recognize the Contract transition period (December 14, 2000 through January 31, 2001) is performed by the Contractor at no cost to the Government. For Contractor travel expenses incurred during the period commencing February 1, 2001 and ending September 30, 2001, a ceiling limitation of \$2,551,142 shall apply to all reimbursements made for Contractor travel expenses under this Contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the Contracting Officer.
  - (b) Notwithstanding any other provisions of the Contract, the Contractor further agrees that none of the funds obligated under the Contract may be used to reimburse employee travel costs incurred on or after December 14, 2000, and before October 1, 2001, which exceed the rates and amounts that apply to federal employees under Subchapter I of Chapter 57 of Title 5, United States Code. Costs which exceed these rates and amounts will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.

AMENDMENT OF SOLICITATION / MODIFICATION OF CONTRACT

CONTRACT ID CODE

PAGE 1 OF 1 PAGES

2. AMENDMENT/MODIFICATION NO. <b>A008</b>	3. EFFECTIVE DATE <b>See Block 16C</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY <b>U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400</b>		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220</b>		9A. AMENDMENT OF SOLICITATION NO.	
		9B. DATED (SEE ITEM 11)	
		10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>	
		10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>	
CODE	FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

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 (a) By completing Items 8 and 15, and returning \_\_\_ copies of the amendment, (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS; IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): <b>CLAUSE NO. 191, OBLIGATION OF FUNDS (APR 1994) (MODIFIED)</b>

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u>A005</u>	\$ <u>63,357,558.65</u>
Funds Obligated by this Modification No.	<u>A008</u>	\$ <u>10,310,567.00</u>
Funds Obligated since Inception of Contract		\$ <u>73,868,125.65</u>

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>James L. Robbins, Contracting Officer Management and Operating Contracts Branch</b>
15B. CONTRACTOR/OFFEROR BY _____ (Signature of person authorized to sign)	16B. DATE SIGNED <b>4/30/01</b>
15C. DATE SIGNED	16C. DATE SIGNED <b>4/30/01</b>

Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"

2. AMENDMENT/MODIFICATION NO. <b>A009</b>	3. EFFECTIVE DATE <b>See Block 16C</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)
6. ISSUED BY U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400		7. ADMINISTERED BY (if other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220</b>	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
	10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>
	10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS:  
IT MODIFIES THE CONTRACT/ORDER NO AS DESCRIBED IN ITEM 14

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): <b>X CLAUSE NO. 191, OBLIGATION OF FUNDS (APR 1994) (MODIFIED)</b>

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u>A008</u>	\$ <u>73,868,125.65</u>
Funds Obligated by this Modification No.	<u>A009</u>	\$ <u>3,985,322.00</u>
Funds Obligated since Inception of Contract		\$ <u>77,853,447.65</u>

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>James L. Robbins, Contracting Officer Management and Operating Contracts Branch</b>
15B. CONTRACTOR/OFFEROR BY _____ (Signature of person authorized to sign)	16B. SIGNATURE <b>Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"</b>
15C. DATE SIGNED	16C. DATE SIGNED <b>5/29/01</b>

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE 1 OF 1 PAGES
2. AMENDMENT/MODIFICATION NO. <b>M010</b>	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400		CODE	7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220</b>			9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>	
			10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>	
CODE	FACILITY CODE			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS;  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input checked="" type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: <b>Public Law 95-91 and Other Applicable Law</b>
<input type="checkbox"/>	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):

E. IMPORTANT: Contractor  is not,  is required to sign this document and return **3** copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

- A. Paragraph B.2(a)(1) is corrected to change the date of "January 31, 2001" to "March 31, 2001."
- B. Section J, Attachment H, List of Applicable Directives, is hereby updated in its entirety to read as set forth in the Attachment to this modification.

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR BY <b>Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"</b>	15C. DATE SIGNED	16B. BY <b>Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"</b>	16C. DATE SIGNED

## PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

### SECTION J – LIST OF ATTACHMENTS

#### ATTACHMENT H

#### LIST OF APPLICABLE DIRECTIVES

Effective: June 1, 2001

This document is "List B" as required by Contract Clause entitled "Laws, Regulations, and Directives." The Contractor shall review and formally assess requirements documents as directed by the Contracting Officer and shall initiate any necessary actions to implement the requirements, including changes to contract terms and conditions (e.g., budget, schedule), to ensure that work will continue to be performed to the latest revision of the requirements documents. "List B" shall, as a minimum, be reviewed and physically updated on an annual basis as part of the annual fee and scope contract modification process to incorporate any necessary changes or updates to the existing list of requirements documents shown in this part of the Contract. As an additional part of the review and update, any new requirements documents that have been determined to be applicable during the preceding fiscal year, and not previously added, shall also be added to "List B" in the annual fee and scope modification.

A. Standards/Requirements Identification Document (S/RID)

The requirements set forth in the S/RID are hereby incorporated by reference

B. Other Requirements Documents

**Note:** Section B, Other Requirements Documents, lists documents that have been reviewed and assessed as applicable to the WIPP, and to activities associated with, affecting, or supporting the WIPP facility and programs. Since S/RID requirements are incorporated by reference in Section A, the Section B documents generally are administrative or programmatically descriptive in nature, and are not those documents that prescribe requirements for the environmental, safety, and health concerns specifically applicable to the WIPP. The "general" documents in Section B may include, but are not limited to, areas such as accounting and budgeting, safeguards and security, and information management. The documents listed in Section B in **boldface** type are specifically listed in the S/RID, but may also include general program requirements in addition to environmental, safety, and health requirements. This Section B listing is currently effective as of the date shown in the title of this document.

Directive

Title

DOE Orders:

DOE O 110.3	Conference Management
DOE O 130.1	Budget Formulation Process
DOE O 135.1	Budget Execution-Funds Distribution and Control
<b>DOE O 151.1A</b>	<b>Comprehensive Emergency Management System</b>
DOE O 200.1	Information Management Program
<b>DOE O 210.1</b>	<b>Performance Indicators and Analysis of Operations Information</b>
<b>DOE O 225.1A</b>	<b>Accident Investigations</b>
<b>DOE O 231.1</b>	<b>Environment, Safety, and Health Reporting</b>
<b>DOE O 232.1A</b>	<b>Occurrence Reporting and Processing of Operations Information</b>
DOE O 241.1	Scientific and Technical Information Management
DOE O 251.1A	Directives System
<b>DOE O 252.1</b>	<b>Technical Standards Program</b>
DOE O 350.1	Contractor Human Resource Management HR Programs
DOE O 413.1	Management Control Program
DOE O 413.3	Program and Project Management for the Acquisition of Capital Assets
DOE O 414.1A	Quality Assurance
<b>DOE O 420.1</b>	<b>Facility Safety</b>
DOE O 425.1B	Startup and Restart of Nuclear Facilities
<b>DOE O 430.1A</b>	<b>Life Cycle Asset Management</b>
DOE O 430.2	In-House Energy Management
<b>DOE O 435.1</b>	<b>Radioactive Waste Management</b>
DOE O 440.1A	Worker Protection Management for DOE Federal and Contractor Employees
DOE O 442.1	Department of Energy Employee Concerns Program
DOE O 451.1B	National Environmental Policy Act Compliance Program
<b>DOE O 460.1A</b>	<b>Packaging and Transportation Safety</b>
<b>DOE O 460.2</b>	<b>Departmental Materials Transportation and Packaging Management</b>
DOE O 470.1	Safeguards and Security Program
DOE O 470.2A	Security And Emergency Management Independent Oversight And Performance Assurance Program
DOE O 471.1	Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.2A	Information Security Program
DOE O 472.1B	Personnel Security Activities
DOE O 473.2	Protective Force Program
DOE O 482.1	DOE Facilities Technology Partnering Programs

DOE O 483.1	DOE Cooperative Research and Developments Agreements
DOE O 534.1	Accounting
DOE O 551.1A	Official Foreign Travel
DOE O 1220.1A	Congressional and Intergovernmental Affairs
DOE O 1230.2	American Indian Tribal Government Policy
<b>DOE O 1270.2B</b>	<b>Safeguards Agreement with the International Atomic Energy Agency</b>
DOE O 1300.3	Policy on the Protection of Human Subjects
<b>DOE O 1340.1B</b>	<b>Management of Public Communications Publications and Scientific, Technical and Engineering Publications</b>
DOE O 1350.1	Audiovisual and Exhibits Management
<b>DOE O 1450.4</b>	<b>Consensual Listening-In To or Recording Telephone/Radio Conversations</b>
DOE O 2030.4B	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE O 2100.8A	Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities
DOE O 2100.12A	Payments for Special Burdens and in Lieu of Taxes
DOE O 2110.1A	Pricing of Departmental Materials and Services
DOE O 2320.1C	Cooperation with the Office of Inspector General
DOE O 2320.2B	Establishment of Departmental Position on Inspector General Reports
DOE O 2321.1B	Auditing of Programs and Operations
<b>DOE O 5400.1</b>	<b>General Environmental Protection Plan</b>
<b>DOE O 5400.5</b>	<b>Radiation Protection of the Public and the Environment</b>
DOE O 5480.4	Environmental Protection, Safety, and Health Protection Standards
<b>DOE O 5480.19</b>	<b>Conduct of Operations Requirements for DOE Facilities</b>
<b>DOE O 5480.20A</b>	<b>Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities</b>
<b>DOE O 5480.21</b>	<b>Unreviewed Safety Questions</b>
<b>DOE O 5480.22</b>	<b>Technical Safety Requirements</b>
<b>DOE O 5480.23</b>	<b>Nuclear Safety Analysis Reports</b>
DOE O 5530.5	Federal Radiological Monitoring and Assessment Center
DOE O 5560.1A	Priorities and Allocations Program
DOE O 5610.14	Transportation Safeguards System Program Operations
DOE O 5632.1C	Protection and Control of Safeguards and Security Interests
DOE O 5632.7A	Protective Force Program
DOE O 5639.8A	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities
DOE O 5670.1A	Management and Control of Foreign Intelligence
DOE O 5670.3	Counterintelligence Program
DOE O 6430.1A	General Design Criteria

DOE Manuals:

DOE M 140.1-1A	Interface with the Defense Nuclear Facilities Safety Board
<b>DOE M 231.1-1</b>	<b>Environment, Safety and Health Reporting Manual</b>
<b>DOE M 232.1-1A</b>	<b>Occurrence Reporting and Processing of Operations Information</b>
DOE M 435.1-1	Radioactive Waste Management Manual
DOE M 440.1-1	DOE Explosives Manual
DOE M 472.1-1A	Personnel Security Program Manual
DOE M 473.2-2	Protective Force Program Manual
DOE M 483.1-1	DOE Cooperative Research and Developments Agreements Manual
DOE M 573.1-1	Mail Services User's Manual

DOE Notices:

DOE N 142.1	Unclassified Foreign Visits and Assignments
DOE N 203.1	Software Quality Assurance
DOE N 205.1	Unclassified Cyber Security Policy
DOE N 205.2	Foreign National Access to DOE Cyber Systems
DOE N 205.3	Password Generation, Protection, and Use
DOE N 350.6	Acceptance of Valid Workers' Compensation Claims
DOE N 441.1	Radiological Protection for DOE Activities
DOE N 470.2	Reporting Unofficial Foreign Travel
DOE N 473.4	Department of Energy Badges
DOE N 473.6	Security Conditions

**AMENDMENT OF SOLICITATION / MODIFICATION OF CONTRACT** CONTRACT ID CODE PAGE 1 OF 1 PAGES

2. AMENDMENT/MODIFICATION NO. <b>A011</b>	3. EFFECTIVE DATE <b>See Block 16C</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)
6. ISSUED BY <b>U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400</b>		7. ADMINISTERED BY (if other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220</b>	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
	10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>
	10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>
CODE	FACILITY CODE

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning \_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS - IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14**

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
<input type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY) <b>CLAUSE NO. I 91, OBLIGATION OF FUNDS (APR 1994) (MODIFIED)</b>

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

**The Department of Energy hereby revises the Obligation of Funds as follows:**

Funds Obligated through Modification No.	<u>A009*</u>	<u>\$ - 77,853,447.65</u>
Funds Obligated by this Modification No.	<u>A011</u>	<u>\$ 5,756,396.48</u>
Funds Obligated since Inception of Contract		<u>\$ 83,609,844.13</u>

\*M010 - Administrative Modification

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>James L. Robbins, Contracting Officer Management and Operating Contracts Branch</b>	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. SIGNATURE <b>Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"</b>	16C. DATE SIGNED <b>6/27/01</b>
BY _____ (Signature of person authorized to sign)			

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE 1 OF 2 PAGES
2. AMENDMENT/MODIFICATION NO. <b>M012</b>	3. EFFECTIVE DATE <b>See Block 16C</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY <b>U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400</b>		7. ADMINISTERED BY (If other than Item 6) CODE		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220</b>			9A. AMENDMENT OF SOLICITATION NO	
			9B. DATED (SEE ITEM 11)	
			10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>	
			10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>	
CODE	FACILITY CODE			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS;  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF

**X Public Law 95-91 and Other Applicable Law**

D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):

E. IMPORTANT: Contractor  is not,  is required to sign this document and return 3 copies to the issuing office

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

See Page 2

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONT BY _____ (S)	Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"	15C. DATE SIGNED	16B. CONT BY _____ --
			Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"
			16C. DATE SIGNED

- A. Section G, Paragraph G.1(a), is hereby modified to delete the last sentence of the paragraph. The deleted sentence begins: "The CAO Area Manager or designee . . . ."
- B. Section G, Paragraph G.2, is hereby modified to change the address for the Contracting Officer for administration to read as follows:  
  
Administrative Contracting Officer  
U.S. Department of Energy  
Carlsbad Field Office  
P.O. Box 3090  
Carlsbad, NM 88221
- C. Section J, Attachment F, Key Personnel, is hereby modified to:  
Delete: Manager, Communications – Chris L. West  
Add: Manager, Strategic Planning and Communications – William A. Keeley
- D. A complete, updated Attachment F is incorporated by Attachment to this modification. The previous Attachment F is hereby deleted in its entirety.

**PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT F**

**KEY PERSONNEL**

Pursuant to the Contract Clause entitled “Key Personnel,” the following positions are considered to be essential to work being performed.

<b>TITLE</b>	<b>NAME</b>
General Manager	John I. Lee
Assistant General Manager, Operations	David P. Reber
Assistant General Manager, Programs	Charles D. Massey
Manager, Environment, Safety, and Health	Candice Jierree
Manager, Quality Assurance	Michael W. Lipscomb
Chief Financial Officer	Darold G. Haug
Deputy Operations Manager/Chief Engineer	John J. Garcia
Manager, Human Resources	Terry L. Frye
Manager, Strategic Planning and Communications	William A. Keeley
Manager, NTP Operations	Michael S. Kearney

2. AMENDMENT/MODIFICATION NO. **A013** 3. EFFECTIVE DATE **See Block 16C** 4. REQUISITION/PURCHASE REQ. NO. 5. PROJECT NO. (if applicable)

6. ISSUED BY **U.S. Department of Energy  
Albuquerque Operations Office  
Management and Operating Contracts Division  
P.O. Box 5400  
Albuquerque, NM 87185-5400** CODE 7. ADMINISTERED BY (if other than item 6) CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) **Westinghouse TRU Solutions LLC  
P.O. Box 2078  
Carlsbad, NM 88220** 9A. AMENDMENT OF SOLICITATION NO. 9B. DATED (SEE ITEM 11) 10A. MODIFICATION OF CONTRACT/ORDER NO. **DE-AC04-01AL66444** 10B. DATED (SEE ITEM 13) **December 14, 2000**

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods: (a) By completing items 8 and 15, and returning \_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS: IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14

- A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF
- D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): **CLAUSE NO. I 91, OBLIGATION OF FUNDS (APR 1994) (MODIFIED)**

IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_ copies to the issuing office

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u>A011*</u>	<u>\$ 83,609,844.13</u>
Funds Obligated by this Modification No.	<u>A013</u>	<u>49,524,003.91</u>
Funds Obligated since Inception of Contract		<u>\$ 103,133,848.04</u>

\*M012 – Administrative Modification

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)  
**James L. Robbins, Contracting Officer  
Management and Operating Contracts Branch**

15B. CONTRACTOR/OFFEROR 15C. DATE SIGNED 16C. DATE SIGNED  
BY \_\_\_\_\_ (Signature of person authorized to sign) **Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"** **7/31/01**

<b>AMENDMENT OF SOLICITATION / MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE 1 OF 1 PAGES
2. AMENDMENT/MODIFICATION NO. <b>A014</b>	3. EFFECTIVE DATE <b>See Block 16C</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400		7. ADMINISTERED BY (If other than Item 6) CODE		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220</b>			9A. AMENDMENT OF SOLICITATION NO	
			9B. DATED (SEE ITEM 11)	
			10A. MODIFICATION OF CONTRACT/ORDER NO.  <b>DE-AC04-01AL66444</b>	
			10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>	
CODE	FACILITY CODE			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

**12. ACCOUNTING AND APPROPRIATION DATA (If required)**

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS; IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14**

- A. THIS CHANGE ORDER IS ISSUED PURSUANT TO, (specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
- B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in funding office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(f)
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF
- D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):  
**X CLAUSE NO. 191, OBLIGATION OF FUNDS (APR 1994) (MODIFIED)**

IMPORTANT Contractor  is not,  is required to sign this document and return \_\_\_\_\_ copies to the issuing office

**14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)**

**The Department of Energy hereby revises the Obligation of Funds as follows:**

Funds Obligated through Modification No.	<u>A013</u>	<u>\$ 103,133,848.04</u>
Funds Obligated by this Modification No.	<u>A014</u>	<u>4,600,892.26</u>
Funds Obligated since Inception of Contract		<u>\$ 107,734,650.30</u>

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>James L. Robbins, Contracting Officer Management and Operating Contracts Branch</b>	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. SIGNATURE Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED <b>8/29/01</b>
BY _____ (Signature of person authorized to sign)		BY _____	

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>		1. CONTRACT ID CODE	PAGE 1 OF 1 PAGES
2. AMENDMENT/MODIFICATION NO. <b>M015</b>	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Albuquerque Operations Office Management and Operating Contracts Division P.O. Box 5400 Albuquerque, NM 87185-5400		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Westinghouse TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220</b>		9A. AMENDMENT OF SOLICITATION NO.	
		9B. DATED (SEE ITEM 11)	
		10A. MODIFICATION OF CONTRACT/ORDER NO. <b>DE-AC04-01AL66444</b>	
		10B. DATED (SEE ITEM 13) <b>December 14, 2000</b>	
CODE	FACILITY CODE		

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS:  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14**

- A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority). THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF  
 **Public Law 95-91 and Other Applicable Law**
- D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):

IMPORTANT: Contract or  is not  is required to sign this document and return **3** copies to the issuing office

14 DESCRIPTION OF AMENDMENT/MODIFICATION (Organize by UCF section headings, including solicitation/contract subject matter where feasible.)

Section J, Attachment H, List of Applicable Directives, is hereby updated in its entirety to read as set forth in the Attachment to this modification.

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. BY	15C. DATE SIGNED	16B. BY	16C. DATE SIGNED
Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"		Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"	

## PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

### SECTION J – LIST OF ATTACHMENTS

#### ATTACHMENT H

#### LIST OF APPLICABLE DIRECTIVES

Effective: October 1, 2001

This document is "List B" as required by Contract Clause entitled "Laws, Regulations, and Directives." The Contractor shall review and formally assess requirements documents as directed by the Contracting Officer and shall initiate any necessary actions to implement the requirements, including changes to contract terms and conditions (e.g., budget, schedule), to ensure that work will continue to be performed to the latest revision of the requirements documents. "List B" shall, as a minimum, be reviewed and physically updated on an annual basis as part of the annual fee and scope contract modification process to incorporate any necessary changes or updates to the existing list of requirements documents shown in this part of the Contract. As an additional part of the review and update, any new requirements documents that have been determined to be applicable during the preceding fiscal year, and not previously added, shall also be added to "List B" in the annual fee and scope modification.

A. Standards/Requirements Identification Document (S/RID)

The requirements set forth in the S/RID are hereby incorporated by reference

B. Other Requirements Documents

**Note:** Section B, Other Requirements Documents, lists documents that have been reviewed and assessed as applicable to the WIPP, and to activities associated with, affecting, or supporting the WIPP facility and programs. Since S/RID requirements are incorporated by reference in Section A, the Section B documents generally are administrative or programmatically descriptive in nature, and are not those documents that prescribe requirements for the environmental, safety, and health concerns specifically applicable to the WIPP. The "general" documents in Section B may include, but are not limited to, areas such as accounting and budgeting, safeguards and security, and information management. The documents listed in Section B in **boldface** type are specifically listed in the S/RID, but may also include general program requirements in addition to environmental, safety, and health requirements. This Section B listing is currently effective as of the date shown in the title of this document.

**Directive**

**Title**

**DOE Orders:**

DOE O 110.3	Conference Management
DOE O 130.1	Budget Formulation
DOE O 135.1	Budget Execution-Funds Distribution and Control
<b>DOE O 151.1A</b>	<b>Comprehensive Emergency Management System</b>
DOE O 200.1	Information Management Program
<b>DOE O 210.1</b>	<b>Performance Indicators and Analysis of Operations Information</b>
DOE O 221.1	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
<b>DOE O 225.1A</b>	<b>Accident Investigation</b>
<b>DOE O 231.1</b>	<b>Environment, Safety, and Health Reporting</b>
<b>DOE O 232.1A</b>	<b>Occurrence Reporting and Processing of Operations Information</b>
DOE O 241.1A	Scientific and Technical Information Management
DOE O 251.1A	Directives System Order
<b>DOE O 252.1</b>	<b>Technical Standards Program</b>
DOE O 350.1	Contractor Human Resource Management Programs
DOE O 413.1	Management Control Program
DOE O 413.3	Program and Project Management for the Acquisition of Capital Assets
DOE O 414.1A	Quality Assurance
<b>DOE O 420.1</b>	<b>Facility Safety</b>
DOE O 425.1B	Startup and Restart of Nuclear Facilities
<b>DOE O 430.1A</b>	<b>Life Cycle Asset Management</b>
DOE O 430.2	In-House Energy Management
DOE O 433.1	Maintenance Management Program for DOE Nuclear Facilities
<b>DOE O 435.1</b>	<b>Radioactive Waste Management</b>
DOE O 440.1A	Worker Protection Management for DOE Federal and Contractor Employees
DOE O 442.1A	Department of Energy Employee Concerns Program
DOE O 451.1B	National Environmental Policy Act Compliance Program
<b>DOE O 460.1A</b>	<b>Packaging and Transportation Safety</b>
<b>DOE O 460.2</b>	<b>Departmental Materials Transportation and Packaging Management</b>
DOE O 461.1	Packaging and Transfer or Transportation of Materials of National Security Interest
DOE O 470.1	Safeguards and Security Program

DOE O 470.2A	Security And Emergency Management Independent Oversight And Performance Assurance Program
DOE O 471.1A	Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.2A	Information Security Program
DOE O 472.1B	Personnel Security Activities
DOE O 473.2	Protective Force Program
DOE O 482.1	DOE Facilities Technology Partnering Programs
DOE O 483.1	DOE Cooperative Research and Developments Agreements
DOE O 534.1A	Accounting
DOE O 551.1A	Official Foreign Travel
DOE O 1220.1A	Congressional and Intergovernmental Affairs
DOE O 1230.2	American Indian Tribal Government Policy
DOE O 1270.2B	<b>Safeguards Agreement with the International Atomic Energy Agency</b>
DOE O 1340.1B	<b>Management of Public Communications Publications and Scientific, Technical, and Engineering Publications</b>
DOE O 1350.1	Audiovisual and Exhibits Management
DOE O 1450.4	<b>Consensual Listening-In To or Recording Telephone/Radio Conversations</b>
DOE O 2100.8A	Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities
DOE O 2100.12A	Payments for Special Burdens and in Lieu of Taxes
DOE O 2110.1A	Pricing of Departmental Materials and Services
DOE O 2320.1C	Cooperation with the Office of Inspector General
DOE O 2320.2B	Establishment of Departmental Position on Inspector General Reports
DOE O 2321.1B	Auditing of Programs and Operations
DOE O 5400.1	<b>General Environmental Protection Program</b>
DOE O 5400.5	<b>Radiation Protection of the Public and the Environment</b>
DOE O 5480.4	Environmental Protection, Safety, and Health Protection Standards
DOE O 5480.19	<b>Conduct of Operations Requirements for DOE Facilities</b>
DOE O 5480.20A	<b>Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities</b>
DOE O 5480.21	<b>Unreviewed Safety Questions</b>
DOE O 5480.22	<b>Technical Safety Requirements</b>
DOE O 5480.23	<b>Nuclear Safety Analysis Reports</b>
DOE O 5530.5	Federal Radiological Monitoring and Assessment Center
DOE O 5560.1A	Priorities and Allocations Program
DOE O 5632.1C	Protection and Control of Safeguards and Security Interests
DOE O 5639.8A	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities

DOE O 5670.1A Management and Control of Foreign Intelligence  
DOE O 5670.3 Counterintelligence Program  
DOE O 6430.1A General Design Criteria

DOE Manuals:

DOE M 140.1-1B Interface with the Defense Nuclear Facilities Safety Board  
**DOE M 231.1-1 Environment, Safety and Health Reporting Manual**  
**DOE M 232.1-1A Occurrence Reporting and Processing of Operations Information**  
DOE M 435.1-1 Radioactive Waste Management Manual  
DOE M 440.1-1 DOE Explosives Safety Manual  
DOE M 472.1-1B Personnel Security Program Manual  
DOE M 473.2-2 Protective Force Program Manual  
DOE M 483.1-1 DOE Cooperative Research and Developments Agreements Manual  
DOE M 573.1-1 Mail Services User's Manual

DOE Notices:

DOE N 142.1 Unclassified Foreign Visits and Assignments  
DOE N 203.1 Software Quality Assurance  
DOE N 205.1 Unclassified Cyber Security Policy  
DOE N 205.2 Foreign National Access to DOE Cyber Systems  
DOE N 205.3 Password Generation, Protection, and Use  
DOE N 350.6 Acceptance of Valid Workers' Compensation Claims  
DOE N 441.1 Radiological Protection for DOE Activities  
DOE N 470.2 Reporting Unofficial Foreign Travel  
DOE N 473.4 Department of Energy Badges  
DOE N 473.6 Security Conditions

**AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT**

1. CONTRACT ID CODE

PAGE 1 OF 2  
PAGES

2. AMENDMENT/MODIFICATION NO.  
**M016**

3. EFFECTIVE DATE

4. REQUISITION/PURCHASE  
REQ. NO.

5. PROJECT NO. (If applicable)

6. ISSUED BY  
**U.S. Department of Energy  
Albuquerque Operations Office  
Management and Operating Contracts Division  
P.O. Box 5400  
Albuquerque, NM 87185-5400**

CODE

7. ADMINISTERED BY (If other than Item 6) CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)

**Westinghouse TRU Solutions LLC  
P.O. Box 2078  
Carlsbad, NM 88220**

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ORDER NO.

**DE-AC04-01AL66444**

10B. DATED (SEE ITEM 13)

**December 14, 2000**

CODE

FACILITY CODE

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)

**X** C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF **Public Law 95-91 and Other Applicable Law**

D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):

E. IMPORTANT: Contractor  is not,  is required to sign this document and return 3 copies to the issuing office

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

See Page 2

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

15B. BY **Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"**

15C. DATE SIGNED

16B. BY **Signature Deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"**

16C. DATE SIGNED

- A. The following Section H clauses are hereby modified as set forth below:
1. Clause H.8, Integrated Accounting, is hereby deleted and reserved (see new clause I.120).
  2. Clause H.9, Financial Management System, is hereby deleted and reserved (see new clause I.119).
  3. Clause H.10, Work for Others Funding Authorizations, is hereby deleted and reserved (see new clause I.118).
  4. Clause H.12, Public Affairs, is hereby deleted and reserved (see new clause I.70).
  5. Clause H.15, Liability with Respect to Cost Accounting Standards, is hereby deleted and reserved (see new clause I.117)
  6. Clause H.18, Community Commitment, is hereby deleted and reserved (see new clause I.105).
  7. Clause H.23, Performance Improvement and Collaboration, is hereby deleted and reserved (see new clause I.86).
  8. Clause H.38, Patent Indemnity - Subcontracts, is hereby deleted and reserved (see new clause I.108).
- B. Clause H.26, Limitation of Long Term Liability Regarding Personnel Costs, is hereby modified to change the final sentence to read as follows: "The Contractor agrees to submit a plan to DOE no later than January 31, 2002."
- C. Section C, Statement of Work, is deleted and replaced with an updated Statement of Work that is included herein as Attachment A to this modification.
- D. Section I is hereby modified to update various clauses resulting from updates to the Department of Energy Acquisition Regulation. An entire updated Section I is included herein as Attachment B to this modification. Revised clauses are identified by the inclusion of this modification number (M016) in the clause title.

**Part I - The Schedule****SECTION C****DESCRIPTION/SPECIFICATION/WORK STATEMENT**  
**DESCRIPTION OF WORK AND SERVICES****STATEMENT OF WORK****C.1 CONTRACT FOCUS**

The purpose of the WIPP is to protect human health and the environment by safe management and disposal of defense generated transuranic (TRU) waste.

**C.2 BACKGROUND**

- (a) The WIPP is a sixteen (16) square mile (10,240 acre) site owned by the United States Department of Energy (DOE) and is located in Southeastern New Mexico. The WIPP includes surface facilities and a geological repository located two thousand one hundred fifty (2,150) feet below the surface. The Property Protection Area (PPA) at WIPP encloses approximately thirty-five (35) acres, and includes the majority of the buildings and structures at WIPP. The area outside the fenced PPA consists of otherwise undeveloped, high-desert terrain. Several administrative offices are located in the city of Carlsbad, some twenty-five (25) miles west of the WIPP.
- (b) The DOE Carlsbad Field Office (CBFO) is responsible for administration of the Contract. The DOE Assistant Secretary for Environmental Management (EM) provides program direction to the CBFO. The DOE Albuquerque Operations Office (DOE-AL) provides administrative support to the CBFO. Sandia National Laboratories (SNL) is the Scientific Advisor to the CBFO. SNL performs the scientific studies and computational activities associated with the long-term performance of the WIPP. The Carlsbad Technical Assistance Contractor (CTAC) provides technical support to the CBFO, with the emphasis on audits and assessments. Other national laboratories and DOE facilities are funded by the CBFO to perform specific tasks related to the WIPP mission.
- (c) WIPP disposal operations began on March 26, 1999, when the first shipment of waste was received at WIPP. The disposal of mixed transuranic waste was authorized with the issuance of a Hazardous Waste Facility Permit by the New Mexico Environment Department on October 28, 1999 with an effective date of November 27, 1999.

- (d) All TRU wastes shipped to WIPP are required to use Type B packaging (shipping containers) certified by the U. S. Nuclear Regulatory Commission (NRC). The four packages currently identified for WIPP are the TRUPACT-II and HalfPACT for contact-handled TRU waste, and the Chem Nuclear Systems (CNS)10-160B and 72-B casks for remote-handled-TRU waste. Currently, all TRU waste is shipped by truck, but may be shipped by rail in the future. The disposal phase will last approximately thirty-five (35) years, and will require an estimated nineteen thousand five hundred (19,500) to thirty-eight thousand (38,000) shipments to WIPP. Following the disposal phase, the WIPP will enter its decommissioning phase lasting approximately five (5) years. During this five (5) year period, the repository will be permanently closed. Planned activities at the WIPP will require the site infrastructure to exist for approximately forty (40) years.
- (e) In the post-decommissioning phase, active institutional controls will be employed for at least one hundred (100) years to prevent human intrusion into the repository. Passive controls, including permanent markers, will warn future generations of the location and hazards of the disposal site.
- (f) The CBFO is also responsible for the management and oversight of DOE authorized programs other than WIPP. For example, underground Science Research and Development projects and the National Border Technology Partnership Program.

### C.3 OVERALL CONTRACTOR RESPONSIBILITIES

#### (a) GENERAL MANAGEMENT

- (1) The Contractor shall be responsible for all operations at the WIPP. The Contractor recognizes that there are objectives associated with the vision of the Government that shall be considered in the management and operation of the WIPP. These objectives are:
  - (i) Safety and Environmental Management Excellence – Protection of the employees, the public, and the environment
  - (ii) Operational Efficiencies – Pursue efficiencies in waste characterization, transportation, and disposal.
- (2) The Contractor shall use its best judgment, skill, and care in the management, operation, and maintenance of the facilities, equipment, and programs described in this statement of work. The Contractor shall perform the work and services in a manner that shall instill public confidence in the WIPP and meet all applicable federal, state, and local

laws, regulations and standards and governing agreements, and permits with regulatory and oversight governmental organizations. The Contractor also shall comply with the terms and conditions of this contract and Contracting Officer directions and approvals.

- (3) Pursuant to the Contract Clause entitled "Laws, Regulations, and DOE Directives," the Contractor shall conform to the requirements of all applicable DOE orders and directives which may establish management, technical, procedural, or other standards and specifications for Contractor work activities. The orders and directives applicable to this Contract are contained at Section J, Attachment H.
- (4) The Contractor shall be fully responsible and accountable for the safe accomplishment of all work, whether performed by its own personnel or subcontractors. The Contractor shall be responsible for planning, integrating, managing, and executing the programs, projects, operations, and other activities as described in this statement of work such that all functions are fully integrated. The Contractor shall provide program management functions that include: legal services, audit services, business systems management, human resources, property management, information resources management, financial management, safeguards and security, emergency operations, communication and intergovernmental activities, training, procurement, underground experimental support, and industrial relations. The Contractor also shall be responsible for operations, environment, safety, health, and quality assurance within its own organization and its subcontractor organizations.
- (5) The Contractor shall, when directed by DOE and may, but only when authorized by DOE, enter into subcontracts for the performance of any part of the work required to support the WIPP.
- (6) The Contractor shall develop programs, capabilities, and technologies consistent with the WIPP mission and to support emerging needs of Federal, non-Federal, educational institution, and private sector partners.

(b) EM PROJECT MANAGEMENT

The Contractor shall maintain the existing project management system for the EM program including the EM project baselines, Integrated Planning, Accountability, and Budgeting System (IPABS), change control process, execution and life-cycle planning process (including standard project management handbook), the project cost-estimating system, continued update of an integrated site-wide baseline, and

critical path analyses. These processes shall be expanded to functional and crosscutting activities.

(c) **ENVIRONMENTAL, SAFETY, AND HEALTH (ES&H) and QUALITY ASSURANCE**

The Contractor shall make ES&H excellence, including the Integrated Safety Management System (ISMS), a cornerstone of all operations. The Contractor shall maintain WIPP certification under the DOE Voluntary Protection Program (VPP) and the International Standards Organization (ISO) 14001 Environmental Management standard.

(1) **WIPP SYSTEMS AND PROGRAMS**

The Contractor shall maintain the existing ISMS, which includes the ISO 14001 Program, the VPP, and the Standards and Requirements Identification Document (S/RID).

(2) **PROTECTION OF WORKERS, THE PUBLIC, AND THE ENVIRONMENT**

(i) Protection of workers, the public, and the environment are responsibilities of the Contractor, using the ISMS.

(ii) The Contractor shall:

(A) Take necessary actions to preclude injuries and fatalities, and keep worker exposures and environmental releases as low as reasonably achievable below established limits minimize the generation of waste and maintain or increase protection to the environment, public, and worker safety and health.

(B) Operate the WIPP, as the DOE's co-permittee under the Hazardous Waste Facility Permit issued by the State of New Mexico.

(3) **QUALITY ASSURANCE**

The Contractor shall maintain the existing Quality Assurance Program in compliance with the most current Carlsbad Field Office Quality Assurance Program Document (QAPD).

**C.4 PROGRAM DESCRIPTIONS and ACCOMPLISHMENTS**

The WIPP conducts site-specific and intra-site integration of TRU waste activities. To achieve the EM programmatic objectives, the Contractor shall be responsible for integrating waste management and environmental activities at the WIPP.

**(a) WIPP DISPOSAL OPERATIONS**

Facilities at the WIPP are used to receive and dispose of TRU waste in a safe, environmentally sound and cost-effective manner.

**(1) INFRASTRUCTURE****(i) Long-term mission support**

The Contractor shall maintain an integrated infrastructure program that includes long-term infrastructure reinvestment planning. The Contractor shall balance short-term pressures to improve operations with long-term infrastructure reinvestment planning. Infrastructure includes: business systems, functional specialties, roads and utilities, emergency management, facility safety, surveillance and maintenance, safeguards and securities, and asset maintenance.

**(ii) Disposition of excess facilities, structures, and equipment**

The Contractor shall properly dispose of excess facilities, systems, structures, and equipment.

**(iii) Land management, facility planning, and disposition requirements**

The Contractor shall maintain the WIPP Land Management Plan (LMP) and the Integrated Capital Asset Management Process Plan (ICAMP) and all necessary supporting systems including the asset inventory, condition, master planning, geographic information system, space management, and risk assessment.

**(2) OPERATIONS****(i) Waste Disposal Facilities**

The Contractor shall manage, operate, maintain, repair, and replace waste handling facilities, systems, and equipment. The Contractor shall actively pursue enhancements to waste handling facilities.

**(ii) Mining Operations**

**(A)** The Contractor shall maintain, operate and continually evaluate underground facilities and systems for safe, cost effective and efficient operations. This includes establishing tradeoffs of new excavation versus remediation of existing spaces.

**(B)** The Contractor shall plan and schedule the development of underground disposal facilities to provide newly-mined disposal panels on a "just-in-time" basis. Waste disposal panels shall be mined and outfitted so that they are ready for use when the previous waste disposal panel is filled and ready for closure.

**(iii) Contact-handled TRU Waste (CH-TRU) Disposal**

The Contractor shall be responsible for disposal of CH-TRU waste.

**(iv) Remote-handled TRU Waste (RH-TRU) Disposal**

The Contractor shall be responsible for RH-TRU waste disposal, including facility modifications and operational readiness of WIPP RH-TRU facilities.

**(b) NATIONAL TRANSURANIC WASTE PROGRAM**

The National Transuranic Waste Program (NTP) develops and manages a comprehensive waste management strategy for all TRU waste under the responsibility of the DOE. Key elements of the NTP include: 1) disposal of TRU waste at the WIPP as described in C.4 (a); 2) Generator/storage site waste characterization and waste certification activities for which the Contractor shall assist the DOE as provided in C.4(b)(1); and 3) TRU waste transportation activities for which the Contractor is responsible as provided in C.4(b)(2) and C.4(b)(3).

**(1) WASTE CHARACTERIZATION**

The Contractor shall assist DOE in the implementation of a central characterization program to solve TRU waste problems at small and large quantity waste generator sites, ensuring that safety and regulatory requirements for TRU waste characterization are met. The program shall utilize mobile/modular systems and a central project office concept to provide resources at multiple locations simultaneously.

**(2) TRANSPORTATION PACKAGING**

- (i) The Contractor shall maintain NRC-certified packages (TRUPACT-II, HalfPACT, and 72-B casks) and records for packaging fabrication and maintenance.
- (ii) The Contractor shall assist DOE with technical and regulatory issues related to NRC-certified packaging. The Contractor shall prepare draft amendments to the Certificates-of-Compliance to authorize new waste forms for transport and to justify modifications to the existing conditions of use.
- (iii) The Contractor shall assist DOE with technology development and quality oversight for the procurement of transportation packaging.

**(3) TRANSPORTATION MANAGEMENT**

- (i) The Contractor shall assist DOE in the certification of generator/storage sites' compliance with transportation requirements, and with the authorization of shipments to WIPP.
- (ii) The Contractor shall assist shipping sites in the initial and continued use of TRUPACT-II, HalfPACT, CNS 10-160B and 72-B casks for shipping TRU waste.
- (iii) The Contractor shall utilize the TRANSCOM system to monitor empty shipments dispatched from the WIPP and inbound waste shipments. The Contractor shall prepare the integrated shipping schedule, which includes packaging (TRUPACT-II, HalfPACT, 10-160B and 72-B casks), trailers, driver and tractor requirements.
- (iv) The Contractor shall assist DOE in activities related to the opening and maintenance of shipping corridors, including the

administration of cooperative agreements and the provision of emergency response training along shipping corridors.

- (v) The Contractor shall assist DOE in the identification, analysis and resolution of issues related to waste transportation and emergency management with states, tribes and local government officials.

(c) **PERMIT MODIFICATIONS FOR OPERATIONAL EFFICIENCY**

(1) **HAZARDOUS WASTE FACILITY PERMIT**

The Contractor shall assist DOE with justification for and preparation of modifications to the Hazardous Waste Facility Permit issued by the State of New Mexico. The Contractor shall focus these efforts to remove permit requirements that increase the costs of transporting or disposing TRU waste and provide no benefits to the health and safety of workers, the public, or the environment.

(2) **COMPLIANCE CERTIFICATION**

The Contractor shall assist DOE with modifications to the 40 CFR Sections 191 and 194 Compliance Certification Application (CCA) in conjunction with the five-year resubmission of the CCA to the EPA. The Contractor shall focus these efforts to justify the removal of CCA requirements that increase the costs of characterizing, certifying, transporting or disposing of TRU waste, but provide no benefits to the health and safety of workers, the public, or the environment.

(d) **RESEARCH AND DEVELOPMENT PROGRAMS**

(1) **R&D FOR PROGRAM EFFICIENCIES**

The Contractor shall partner with other WIPP participants and propose research and development initiatives that have the objective of improving the operational efficiency of the WIPP and the National TRU Program. These initiatives will be submitted to DOE for approval.

(2) **OTHER EXPERIMENTAL PROGRAMS**

The Contractor shall assist the DOE with experiments and demonstrations in support of other programs not associated with transuranic waste disposal, using the unique characteristics and facilities of WIPP.

**(e) PARTNERING AGREEMENT**

The Contractor and the Government will establish a Partnering Agreement for work related to the operation of the site. The agreement will establish a common vision with supporting goals and missions. It will promote the principles of teamwork, mutual respect, openness, honesty, trust, and professionalism and build a better understanding of one another's position. The agreement will also include a joint commitment to:

- (1) Maintain high safety performance.
- (2) Complete projects on schedule, within cost
- (3) Eliminate barriers to a faster, more cost-effective and efficient program
- (4) Create an organizational culture able to accommodate change.
- (5) Resolve conflicts through a coordinated work effort to avoid adversarial relations.
- (6) Reinforce the partnered relationship with honest feedback and continual improvement.

**(f) OTHER DOE AUTHORIZED CBFO PROGRAMS**

The Contractor shall assist the DOE with communications, outreach and intergovernmental activities in support of the National Border Technology Partnership Program and other CBFO regional development activities.

**C.5 ACRONYMS**

CBFO	Carlsbad Field Office
CCA	Compliance Certification Application
CFR	Code of Federal Regulations
CH-TRU	Contact-handled Transuranic Waste
CNS	Chem Nuclear Systems
CTAC	Carlsbad Technical Assistance Contractor
DOE	U. S. Department of Energy
DOE-AL	Albuquerque Operations Office
EM	Assistant Secretary for Environmental Management
ES&H	Environment, Safety and Health
EPA	U. S. Environmental Protection Agency
HalfPACT	Half-height Transuranic Waste Package Transporter

ICAMP	Integrated Capital Asset Management Process
IPABS	Integrated Planning, Budgeting and Accountability System
ISMS	Integrated Safety Management System
ISO	International Standards Organization
LMP	Land Management Plan
NRC	U. S. Nuclear Regulatory Commission
NTP	National Transuranic Waste Program
PPA	Property Protection Area
QA	Quality Assurance
RH-TRU	Remote-handled Transuranic Waste
SNL	Sandia National Laboratories
S/RID	Standards and Requirements Identification Document
TRU	Transuranic Waste
TRUPACT-II	Transuranic Waste Package Transporter Type II
VPP	Voluntary Protection Program
WIPP	Waste Isolation Pilot Plant

**Attachment B to Modification No. M016  
Westinghouse TRU Solutions LLC  
Contract No. DE-AC04-01AL66444**

**SECTION I**

**PART II – CONTRACT CLAUSES**

Part II - Contract Clauses

Section I

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Note 1: The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1), the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9), and the U.S. Department of Energy Procurement Regulations (DOE-PR) (41 CFR Chapter 9).

Note 2: Consistent with DEAR 970.5202, DEAR clauses indicated as “(Modified)” means that a minor change(s) in wording of the clause has been made for the purpose of clarification only and not with the intent of altering the meaning, intent, substance, or the principles expressed in the clause.

Part II

Section I

CONTRACT CLAUSES

1. **FAR 52.202-1 DEFINITIONS (OCT 1995) (As modified by DEAR 952.202-1 DEFINITIONS (MAR 1995))**
  - (a) The term "Head of Agency" means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy and 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 for non-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 advanced 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 non-governmental 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

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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 such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services-
    - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
    - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
  - (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;
  - (7) Any item, combination of items, or service referred to in subparagraphs (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 non-developmental 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 Federal Government as part of an end item or of another component.
- (e) "Non-developmental 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 (e)(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 (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) "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.
- (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 and "FERC" means the Federal Energy Regulatory Commission.

**2. FAR 52.203-3 GRATUITIES (APR 1984)**

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--
- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
  - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this Contract is terminated under paragraph (a) above, the Government is entitled--

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages of not less than three nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this Contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**3. FAR 52-203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

**4. FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

- (a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this Contract or under any follow-on production contract.
- (b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this Contract which exceed \$100,000.

**5. FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**

- (a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime Contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a Prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a Prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--
- (1) Providing or attempting to provide or offering to provide any kickback;
  - (2) Soliciting, accepting, or attempting to accept any kickback; or
  - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a subcontractor to a Prime Contractor or higher tier subcontractor.
- (c)
- (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
  - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
  - (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
  - (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already

offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

- (5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this Contract which exceed \$100,000.

**6. FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may --
  - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
  - (2) Rescind the contract with respect to which --
    - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either --
      - (A) Exchanging the information covered by such subsections for anything of value; or
      - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
    - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the Government rescinds the Contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

7. **FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be
  - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
  - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.
  - (3) For cost-plus-award-fee contracts --
    - (i) The base fee established in the contract at the time of contract award;
    - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
  - (4) For fixed-price-incentive contracts, the Government may --
    - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
    - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in

accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this Contract for default. The rights and remedies of the government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

**8. FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

(a) Definitions

"Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, U.S.C., including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, U.S.C.
- (3) A special Government employee, as defined in Section 202, Title 18, U.S.C.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, U.S.C., Appendix

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of Title 31, U.S.C., among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an

employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

- (3) The prohibitions of the Act do not apply under the following conditions:
- (i) Agency and Legislative Liaison by Own Employees.
- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
- (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specially requested by an agency or Congress is permitted at anytime.
- (C) The following agency and legislative liaison activities are permitted at anytime where they are not related to a specific solicitation for any covered Federal action:
- 1 Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
- 2 Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--
- 1 Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

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- 2 Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
  - 3 Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.
- (ii) Professional and Technical Services.
- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--
- 1 A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
  - 2 Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.
- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
- (E) The reporting requirements of Federal Acquisition Regulation 3.803(a) shall not apply with respect to

payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) Disclosure.

- (A) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
- (B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
- 1 A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - 2 A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - 3 A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.
- (D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all

disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

- (iv) Agreement. The Contractor agrees not to make any payment prohibited by this clause.
- (v) Penalties
  - (A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
  - (B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (vi) Cost Allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

**9. FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989)**

This Contract is subject to the written approval of the DOE Procurement Executive or designee and shall not be binding until so approved.

**10. FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000) (M016)**

(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." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as-

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

"Printed or copied double-sided" means printing or reproducing a document so that information is on both sides of a sheet of paper.

"Recovered material," for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as-
  - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

- (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.
  - (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.
  - (c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.
- 11. FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**
- (a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
  - (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
  - (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Non-procurement Programs). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

**12. FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000) (M016)**

- (a) Definitions.

As used in this clause-

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"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.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means-

- (1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
- (2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

- (b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.
- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

**13. FAR 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)**

Any inconsistency in this solicitation or Contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) Representations and other instructions; (c) Contract Clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

**14. FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)**

- (a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.
- (b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

- (c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.
- (d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

**15. FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000) (M016)**

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient Contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (c) Definitions. As used in this contract—

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"-

- (1) Means a small business concern-
  - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer, that—

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;
- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern-

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

- (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern—

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - (2) Whose management and daily business operations are controlled by one or more women.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

**16. FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000)  
ALTERNATE II (OCT 2000) (M016)**

- (a) This clause does not apply to small business concerns.
- (b) Definitions. As used in this clause—

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire Contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

- (c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.
- (d) The offeror's subcontracting plan shall include the following:
  - (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disable veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to Contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
  - (2) A statement of -
    - (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
    - (ii) Total dollars planned to be subcontracted to small business concerns;

- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
  - (iv) Total dollars planned to be subcontracted to HUBZone small business concerns;
  - (v) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
  - (vi) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to –
- (i) Small business concerns,
  - (ii) Veteran-owned small business concerns;
  - (iii) HUBZone small business concerns;
  - (iv) Small disadvantaged business concerns, and
  - (v) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities

(e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with –
  - (i) Small business concerns;
  - (ii) Veteran-owned small business concerns;
  - (iii) HUBZone small business concerns;
  - (iv) Small disadvantaged business concerns; and
  - (v) Women-owned small business concerns
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this Contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will –
  - (i) Cooperate in any studies or surveys as may be required;
  - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
  - (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report,

in accordance with the paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
- (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating –
  - (A) Whether small business concerns were solicited and if not, why not;
  - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
  - (C) Whether HUBZone small business concerns were solicited and, if not, why not;

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- (D) Whether small disadvantaged business concerns were solicited and if not, why not;
  - (E) Whether women-owned small business concerns were solicited and if not, why not; and
  - (F) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact –
- (A) Trade associations;
  - (B) Business development organizations;
  - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
  - (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through –
- (A) Workshops, seminars, training, etc., and
  - (B) Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient Contract performance, the Contractor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, HUBZone small business,

small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

- (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
  - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
  - (4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided –
- (1) The master plan has been approved;
  - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
  - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this Contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
- (i) The failure of the Contractor or subcontractor to comply in good faith with
  - (1) The clause of this Contract entitled "Utilization Of Small Business Concerns;" or
  - (2) An approved plan required by this clause, shall be a material breach of the contract.
- (j) The Contractor shall submit the following reports:
  - (1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at Contract completion. The report covers subcontract award data related to this Contract. This report is not required for commercial plans.
  - (2) Standard Form 295, Summary Subcontract Report. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

**17. FAR 52.219-16 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN  
(JAN 1999)**

- (a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**18. FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-DISADVANTAGED STATUS AND REPORTING (OCT 1999)**

- (a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from

joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

- (b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

**19. FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

**20. FAR 52.222-3 CONVICT LABOR (AUG 1996)**

The Contractor agrees not to employ in the performance of this Contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this Contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this Contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this Contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana

Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a)
  - (1) The worker is paid or is in an approved work training program on a voluntary basis;
  - (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
  - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
  - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**21. FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (SEPT 2000) (M016)**

- (a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy

Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

- (d) Payrolls and basic records.
  - (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
  - (2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.
- (e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

**22. FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)**

If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

- (b) All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**23. FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**24. FAR 52.222-26 EQUAL OPPORTUNITY (FEB 1999)**

- (a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (b) During performance of this contract, the Contractor agrees as follows:
  - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to

extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

- (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,
  - (i) employment;
  - (ii) upgrading;
  - (iii) demotion;
  - (iv) transfer;
  - (v) recruitment or recruitment advertising;
  - (vi) layoff or termination;
  - (vii) rates of pay or other forms of compensation; and
  - (viii) selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explains this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months

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preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
  - (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
  - (10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
  - (11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

**25. FAR 52.222-29 NOTIFICATION OF VISA DENIAL (FEB 1999) (M016)**

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 601.10). The Contractor agrees to notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 7325, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

**26. FAR 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

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

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who --

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) *General.*

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) employment;
- (ii) upgrading;
- (iii) demotion or transfer;
- (iv) recruitment;
- (v) advertising;
- (vi) layoff or termination;
- (vii) rates of pay or other forms of compensation; and
- (viii) selection for training, including apprenticeship.

- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) *Listing Openings.*

- (1) The Contractor agrees to list all employment openings existing at Contract award or occurring during Contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.
- (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment

source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and non-veterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive Orders regulations concerning nondiscrimination in employment.

- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract clause.

(d) *Applicability.*

This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) *Postings*

- (1) The Contractor agrees to post employment notices stating--
  - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and
  - (ii) The rights of applicants and employees
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other Contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

- (f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**27. FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

- (a) *General.*
  - (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--
    - (i) Recruitment, advertising, and job application procedures;
    - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
    - (iii) Rates of pay or any other form of compensation and changes in compensation;
    - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
    - (v) Leaves of absence, sick leave, or any other leave;
    - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
    - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment
  - (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) *Postings.*
- (1) The Contractor agrees to post employment notices stating-
    - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
    - (ii) The rights of applicants and employees.
  - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U. S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
  - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the

Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**28. FAR 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999) (DEVIATION) (M016)**

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on –
  - (1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and
  - (2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:
  - (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or
  - (2) As of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will

be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

- (f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary.

**29. FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)**

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The Offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material  
(If none, insert "None") Identification No.


- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful Offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful Offeror being considered non-responsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
  - (1) To use, duplicate and disclose any data to which this clause is applicable  
The purposes of this right are to-
    - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - (ii) Obtain medical treatment for those affected by the material; and
    - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
  - (3) The Government is not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
  - (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

- (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

**30. FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)**

- (a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA, the emergency notice requirements of Section 304 of EPCRA, the list of Material Data Safety Sheets required by Section 311 of EPCRA, the emergency and hazardous chemical inventory forms of Section 312 of EPCRA, and the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA, and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

**31. FAR 52.223-6 DRUG FREE WORKPLACE (MAY 2001) (M016)**

- (a) Definitions. As used in this clause-

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the

Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

"Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

- (b) The Contractor, if other than an individual, shall- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration-
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
  - (2) Establish an ongoing drug-free awareness program to inform such employees about-
    - (i) The dangers of drug abuse in the workplace;
    - (ii) The Contractor's policy of maintaining a drug-free workplace;
    - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;
  - (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will-

- (i) Abide by the terms of the statement; and
  - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
- (i) Taking appropriate personnel action against such employee, up to and including termination; or
  - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

**32. FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000) (M016)**

- (a) Definitions. As used in this clause-

"Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid

waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

"Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

"Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

- (b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.) and implementing regulations (40 CFR part 247).

**33. FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) (M016)**

- (a) Definition. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as:
  - (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
  - (2) Class II, including, but not limited to, hydrochlorofluorocarbons
- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) \*\_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

**34. FAR 52-223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)**

The contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

**35. FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000) (M016)**

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
- (b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if-
  - (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
  - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
  - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
  - (4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or
  - (5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt-

- (1) The Contractor shall notify the Contracting Officer; and
- (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall-
  - (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
  - (ii) Continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall-
  - (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.22313, Certification of Toxic Chemical Release Reporting; and
  - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

**36. FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

37. FAR 52.224-2 PRIVACY ACT (APR 1984)

- (a) The Contractor agrees to--
- (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the Contract specifically identifies--
    - (i) The system of records; and
    - (ii) The design, development, or operation work that the Contractor is to perform.
  - (2) Include the Privacy Act notification contained in this Contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and
  - (3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this Contract which requires the design, development, or operation of such a system of records.
- (b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.
- (c)
- (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
  - (2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the

identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

- (3) "System of records on individuals," as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**38. FAR 52.225-1 BUY AMERICAN ACT – BALANCE OF PAYMENTS PROGRAM - SUPPLIES (FEB 2000) (M016)**

(a) Definitions as used in this clause--

- (1) "Component" means any item supplied to the Government as part of an end item or of another component.
- (2) "Cost of components" means--
- (i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (i) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- (3) "Domestic end product" means --
- (i) An unmanufactured end product mined or produced in the United States; or
- (ii) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and

prepared for processing in the United States is considered domestic.

- (4) "End product" means supplies delivered under a line item of a Government contract.
  - (5) "Foreign end product" means an end product other than a domestic end product.
  - (6) "United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.
- (b) The Buy American Act (41 U.S.C. 10a-10d) provides a preference for domestic end products for supplies acquired for use in the United States. The Balance of Payments Program provides a preference for domestic end products for supplies acquired for use outside the United States.
  - (c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.
  - (d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act--Balance of Payments Program Certificate."

**39 FAR 52.225-8 DUTY-FREE ENTRY (FEB 2000) (M016)**

- (a) Definition. "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.
- (b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.
- (c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:
  - (1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to

the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the-

- (i) Foreign supplies;
  - (ii) Estimated amount of duty; and
  - (iii) Country of origin
- (2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.
- (3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- (d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if-
- (1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and
  - (2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.
- (e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.
- (f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.
- (g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the-

- (1) Delivery address of the Contractor (or contracting agency, if appropriate);
  - (2) Government prime contract number;
  - (3) Identification of carrier;
  - (4) Notation "UNITED STATES GOVERNMENT, \_\_\_\_\_ [agency] \_\_\_\_\_, Duty-free entry to be claimed pursuant to Item No(s) \_\_\_\_\_ [from Tariff Schedules] \_\_\_\_\_, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";
  - (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
  - (6) Estimated value in United States dollars
- (h) The Contractor shall instruct the foreign supplier to-
- (1) Consign the shipment as specified in paragraph (g) of this clause;
  - (2) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency; and
  - (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- (i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the-
- (1) Foreign supplies;
  - (2) Country of origin;
  - (3) Contract number; and

- (4) Scheduled delivery date(s)
- (j) The Contractor shall include the substance of this clause in any subcontract if:
  - (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
  - (2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

**40. FAR 52.225-9 BUY AMERICAN ACT – BALANCE OF PAYMENTS PROGRAM - CONSTRUCTION MATERIALS (FEB 2000) (M016)**

- (a) Definitions. As used in this clause--
  - (1) "Components means" any article, material, or supply incorporated directly into construction materials.
  - (2) "Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.
  - (3) "Cost of components means"--
    - (i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
    - (ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (i) of this definition, plus allocable overhead costs, but excluding profit. Cost of

components does not include any costs associated with the manufacture of the end product.

- (4) "Domestic construction material" means--
- (i) An unmanufactured construction material mined or produced in the United States; or
  - (ii) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.
- (5) "Foreign construction material" means a construction material other than a domestic construction material.
- (6) "United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Domestic preference

- (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in subparagraphs (b)(2) and (b)(3) below.
- (2) This requirement does not apply to the construction material or components listed by the Government as follows:

None

(Contracting Officer to list applicable accepted materials or indicate "none")

- (3) The Contracting Officer may add other foreign construction material to the list in subparagraph (b)(2) above if the Government determines that
  - (i) The cost of domestic construction material would be unreasonable  
The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when

the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

- (ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or
  - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.
- (1) (i) Any Contractor request to use foreign construction material in accordance with subparagraph (b)(3) above shall include adequate information for Government evaluation of the request, including--
    - (A) A description of the foreign and domestic construction materials;
    - (B) Unit of measure;
    - (C) Quantity;
    - (D) Price;
    - (E) Time of delivery or availability;
    - (F) Location of the construction project;
    - (G) Name and address of the proposed supplier; and
    - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with subparagraph (b)(3) above.
  - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) below.
  - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
  - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the

Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in subparagraph (b)(3)(i) above.

- (3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.
- (d) Data. To permit evaluation of requests under paragraph (c) above based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON**

<u>Construction Material</u> <u>Description</u>	<u>Unit Of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>
Item 1:			
Foreign construction material			
Domestic construction material		(No Entries)	
Item 2:			
Foreign construction material			
Domestic construction material			

Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued). List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

**41. FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000) (M016)**

- (a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

- (b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

**42. FAR 52.227-3 PATENT INDEMNITY (APR 1984)**

- (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to--
  - (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
  - (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
  - (3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

**43. FAR 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (APR 1984) (M016)**

- (a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the

Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

- (b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.
- (c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.
- (d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.
- (e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter

**44. FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987)**

Except for data contained on pages \_\_\_\_\_, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General"

clause contained in this contract) in and to the technical data contained in the proposal dated \_\_\_\_\_, upon which this contract is based.

45. **FAR 52.229-10 NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (OCT 1988) (As modified by DEAR 970.5204-4 (FEB 1990))**
- (a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this Contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the Contract number.
  - (b) (Modified) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this Contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Costs, Base Fee and Performance Fee Clause of this Contract except as provided in paragraph (d) of this clause.
  - (c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the United States Department of Energy and the New Mexico Taxation and Revenue Department.
  - (d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.
  - (e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
  - (f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the

principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

- (g) The United States Department of Energy may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the United States Department of Energy, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the United States Department of Energy to represent its Contractor.
- (h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.
- (i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

**46. FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)**

- (a) Unless the Contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall-
  - (1) *(CAS-covered Contracts Only)* By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this Contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
  - (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting Contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the

change must be applied prospectively to this Contract and the Disclosure Statement must be amended accordingly. If the Contract price or cost allowance of this Contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

- (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this Contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
- (4)
  - (i) Agree to an equitable adjustment as provided in the Changes clause of this Contract if the Contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.
  - (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
  - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
- (5) Agree to an adjustment of the Contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is

effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

- (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR, Part 9904 or a CAS rule or regulation in 48 CFR, Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

**47. FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS  
(NOV 1999)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

- (a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm fixed-price, incentive, cost-plus-fixed fee, etc.) and other Contractor business activity.

As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

- (1) For any change in cost accounting practices required to comply with a new or modified CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
  - (2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, Cost Accounting Standards, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
  - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):
    - (i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
    - (ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.
- (b) After an ACO determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
- (1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, or

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subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-5, Cost Accounting Standards - Educational Institutions shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clause in this Contract entitled "Cost Accounting Standards or Cost Accounting Standards - Educational Institutions," which have an award date before the effective date of that standard or cost principle.

- (2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, Cost Accounting Standards and Cost Accounting Standards - Educational Institutions, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clause at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards - Educational Institutions and FAR 52-230-3, Disclosure and Consistency of Cost Accounting Practices.
  - (3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clause at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.
- (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause at FAR 52.230-2 or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.
- (e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3 or 52.230-5-
- (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);

- (2) Include the substance of this clause in all negotiated subcontracts; and
- (1) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:
  - (i) Subcontractor's name and subcontract number.
  - (ii) Dollar amount and date of award.
  - (iii) Name of Contractor making the award.
- (f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or prime contract appropriately.
- (g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontract signed Certificate of Current Cost or Pricing Data, whichever is earlier.

**48. FAR 52.232-17 INTEREST (JUN 1996)**

- (a) Except as otherwise provided in this Contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this Contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
  - (1) The date fixed under this contract.

- (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
  - (3) The date the Government transmits to the Contractor proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
  - (4) If this Contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by Contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

**49. FAR 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986)**

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

**50. FAR 52.233-1 DISPUTES (DEC 1998) ALTERNATE I (DEC 1991)**

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- (d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
- (2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (a) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (b) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (c) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer

initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**51. FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) (ALTERNATE 1)  
(JUN 1985)**

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the "Termination" clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if--
  - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage, provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this Contract.

- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this Contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertifications, a protest related to this Contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

**52. FAR 57.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

**53. FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

- (a) The Contractor recognizes that the services under this Contract are vital to the Government and must be continued without interruption and that, upon Contract expiration or termination, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this Contract expires and (2)

negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after Contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**54. FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)**

- (a) Notwithstanding any other clause of this contract--
  - (1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this Contract that have been determined not to be allowable under the Contract terms; and
  - (2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

**55. FAR 52.242-13 BANKRUPTCY (JUL 1995)**