

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% 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.

**I.114 DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS
MANAGEMENT AND OPERATING CONTRACTS (DEC 2000) (M016)**

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.

I.115 DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000) (A000) (M016)

- (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.

I.116 DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000) (M016)

- (a) For the purposes of this clause,
- (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (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 DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract 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) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this Contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.
- (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 choose not to require the subcontractor to submit a Safety Management System for the contractor's review and approval.

**I.117 DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)
(A000) (M016) (M066)**

- (a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13101 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.
- (b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.

(c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.

(d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management contractor may include such quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available (i) competitively within a reasonable time, (ii) at a reasonable price, or, (iii) within the performance requirements. If reports are required of the subcontractor, such reports shall be submitted to the facility management contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties

(e) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "subcontractor" and the term "DOE Recycling Coordinator" will be understood to mean "Contractor Recycling Coordinator."

I.118 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000) (A000) (M016)

- (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.

I.119 DEAR 970.5223-5 DOE MOTOR VEHICLE FUEL EFFICIENCY (OCT 2003) (M066)

When managing Government-owned vehicles for the Department of Energy, the Contractor will conduct operations relating to such vehicles in accordance with the goals and requirements of *Executive Order 13149, Greening the Government Through Federal Fleet and Transportation Efficiency*, and implementing guidance contained in the document entitled *U.S. Department of Energy Compliance Strategy for Executive Order 13149* (April 2001) and future revisions of this compliance strategy that are identified in writing by the Contracting Officer. Section 506 of Executive Order 13149 exempts military tactical, law enforcement, and emergency vehicles from the requirements of the order.

I.120 DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000) (A000) (M016)

The Contractor shall submit a Diversity Plan to the contracting officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The contractor shall submit an update to its Plan annually or 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, (5) economic development (including technology transfer), and (6) the prevention of profiling based on race or national origin.

I.121 DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000) (M016)

- (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 DOE has determined that a change in workforce at a DOE Defense Nuclear Facility is necessary, the Contractor agrees to (1) comply with the DOE 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 41 U.S.C. §403) expected to exceed \$500,000.

I.122 DEAR 970.5226-3 COMMUNITY COMMITMENT (DEC 2000) (M016)

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.

I.123 DEAR 970.5227-1 RIGHTS IN DATA FACILITIES (DEC 2000) (M066)

(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 right 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 Subpart 27.4 as supplemented by 48 CFR 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 48 CFR 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 48 CFR 970.5227-1 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 48 CFR 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.

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.

**I.124 DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) (M016)
(M035)**

- (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) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.
- (c)
 - (1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed \$100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.
 - (2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed \$100,000.

- (3) Omission of an authorization and consent clause from any subcontract, including those valued less than \$100,000 does not affect this authorization and consent.

I.125 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002) (M016) (M035)

- (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) If any person files a 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 hereunder, 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. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.
- (c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$100,000.

I.126 DEAR 970.5227-6 PATENT INDEMNITY—SUBCONTRACTS (DEC 2000) (M016)

Except as otherwise authorized by the Contracting Officer, the Contractor shall 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, as prescribed in FAR 48 CFR 52.227-3.

I.127 DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002) (M016) (M035)

- (a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

- (1) Name and address of licensor;
 - (2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (4) Percentage or dollar rate of royalty per unit;
 - (5) Unit price of contract item;
 - (6) Number of units;
 - (7) Total dollar amount of royalties; and
 - (8) A copy of the proposed license agreement.
- (b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.
- (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 that are used in the performance of this contract or any subcontract hereunder.
- (d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.
- (e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.
- (f) 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 for which the Contractor makes a royalty or other payment.

- (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 any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.
- (h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), 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.

I.128 DEAR 970.5227-11 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000) (M066)

(a) Definitions. (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.

(2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.

(3) Invention 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 which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Patent Counsel means DOE Patent Counsel assisting the contracting activity.

(6) Practical application 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.

(7) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d)

of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) Allocation of Principal Rights. (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(2) of this clause or by a request for foreign patent rights in accordance with subparagraph (d)(2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) Greater rights determinations. The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c)(2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(c) Subject Invention Disclosures. (1) Contractor procedures for reporting subject inventions to Contractor personnel. Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and the maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such

procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

(2) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

- (i) the contract number under which the subject invention was made;
- (ii) the inventor(s) of the subject invention;
- (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
- (iv) the date and identification of any publication, on sale or public use of the invention;
- (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
- (vi) a statement indicating whether the subject invention concerns exceptional circumstances pursuant to 35 U.S.C. 202(ii), related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
- (vii) all sources of funding by Budget and Resources (B&R) code; and
- (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements. Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE

under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(3) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor.

(4) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(5) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

(6) Duplication and disclosure of documents. 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; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR 401.13.

(d) Minimum Rights of the Contractor. (1) Contractor License. (i) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(2) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of

which the Contractor is a party 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.

(ii) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine the Contractor's license is non-transferrable, on a case-by-case basis.

(iii) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license 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 DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensee, or its domestic subsidiaries or affiliates achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

(iv) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE licensing regulations.

(2) Contractor's right to request foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the foreign country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE Contracting Officer, unless a longer period is authorized

in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.

(e) Examination of Records Relating to Inventions. (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

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

(f) Subcontracts. (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202(a)(ii).

(3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work.

(4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the 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.

(5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify 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 a subcontract.

(7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(g) Atomic Energy. (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (g)(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

(h) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.

(i) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(j) Reports. (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.

(2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(k) 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. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(l) Classified Inventions. (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(m) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(n) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

**I.129 DEAR 970.5228-1 INSURANCE--LITIGATION AND CLAIMS (MAR 2002)
(A000) (M016) (M066)**

(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 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (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 970.5245-1.

(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.

I.130 DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000) (A000) (M016)

(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 "Insurance-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.

L131 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) ALTERNATE II (DEC 2000) (A000) (M016)

- (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.

I.132 DEAR 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000) (M016)

- (a) The Contracting Officer may reduce or suspend further advance, partial, or progress payments to the Contractor upon a written determination by the Senior Procurement Executive 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.

I.133 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000), ALTERNATE III (DEC 2000) (M016)

- (a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the section H clause entitled "Program Performance Fee." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this Contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the Contracting Officer.
- (b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual 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 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, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
- (d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:
- (1) Compliance by the Contractor with DOE's patent clearance requirements, and
 - (2) The furnishing by the Contractor of:
 - (i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

- (ii) A closing financial statement;
- (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
- (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
 - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause I.092, DEAR 970.5228-1, "Insurance-- Litigation and Claims");
 - (C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and
 - (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the Contractor under this clause, there shall be deducted,
 - (i) any claim which the Government may have against the Contractor in connection with this contract, and

- (ii) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
- (f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
- (h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
- (i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this Contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.
- (j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the DOE Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.
- (k) 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.

**I.134 DEAR 970-5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000)
ALTERNATE II (DEC 2000) (M016)**

- (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, negotiated fixed amounts, 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 Section I Clause, 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 proper 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 the provisions of Section I Clause, 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 and 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 (h) 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) 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.
- (i) 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. The Contractor shall include this paragraph (i) in all cost-reimbursement subcontracts with an estimated cost exceeding \$5 million and expected to run for more than 2 years, and any other cost-reimbursement subcontract determined by the Head of the Contracting Activity.

I.135 DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000) (Modified) (M016)

- (a) **Obligation of funds. (Modified)** 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 Termination clause of this contract 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 Section I 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 and any negotiated fixed amount. 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 ninety (90)-day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only ninety (90) days and to cover the contractor's unpaid fee and any negotiated fixed amounts, 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 and any negotiated fixed amounts, 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 Termination clause of this contract.
- (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 directives may be amended or supplemented from time to time by DOE. The Contractor agrees
- (1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,
 - (2) to comply with other requirements of such plans and directives, and
 - (3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances 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 Termination clause of this contract.

I.136 DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000) (M016)

- (a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract 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 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.

I.137 DEAR 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000) (M016)

Any uncollectible receivables resulting from the Contractor utilizing Contractor corporate funding for reimbursable work shall be the responsibility of the Contractor, and the United States Government shall have no liability to the Contractor for the contractor's uncollected receivables. 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 Laws, Regulations, and DOE Directives clause of this contract 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 Laws, Regulations, and DOE Directives clause of this contract 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.

I.138 DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000) (M016)

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 currently 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 written approval before implementation.

I.139 DEAR 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000) (M016)

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 Laws, regulations, and DOE directives clause of this Contract.

I.140 DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000) (M016)

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.

I.141 DEAR 970.5237-2 FACILITIES MANAGEMENT (DEC 2000) (A000) (M016)

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 those 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) of this clause. 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.

**I.142 DEAR 970.5242-1 PENALTIES FOR UNALLOWABLE COSTS (DEC 2000)
(M016)**

- (a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.
- (b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.
- (c) Unallowable costs are either expressly unallowable or determined unallowable.
 - (1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.
 - (2) A cost determined unallowable is one which, for that contractor,
 - (i) was subject to a Contracting Officer's final decision and not appealed;
 - (ii) the Department's Board of Contract Appeals or a court has previously ruled as unallowable; or
 - (iii) was mutually agreed to be unallowable.
- (d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is:
 - (1) expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or
 - (2) determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

- (e) The Contracting Officer may waive the penalty provisions when
- (1) the Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;
 - (2) the amount of the unallowable costs allocated to covered contracts is \$10,000 or less; or
 - (3) the Contractor demonstrates to the Contracting Officer's satisfaction that:
 - (i) it has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the contractor's submission for settlement of costs; and
 - (ii) the unallowable costs subject to the penalty were inadvertently incorporated into the submission.

I.143 DEAR 970.5243-1 CHANGES (DEC 2000) (A000) (M016)

- (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 it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time 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.

I.144 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (DEC 2000) (M016) (M066)

(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 970.44. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.4401-1. 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 (y) 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 970.4401-3.

(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 970.4402-3 and 48 CFR 970.3102-3-21(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 nonconstruction 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 nonavailability 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 nonavailability 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 970.4402-3.

(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 Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 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 Chapter 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 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

(y) Legal Services. Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

I.145 DEAR 970.5245-1 PROPERTY (DEC 2000) (A000) (M016)

- (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 personalty 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 costs 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 DOE 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 DOE 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 all cost reimbursable subcontracts.

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

**PERFORMANCE EVALUATION
AND MEASUREMENT PLAN
Washington TRU Solutions, LLC
Contract No. DE-AC29-01AL66444
FEBRUARY 1, 2001 through SEPTEMBER 30, 2010**

SECTION J, ATTACHMENT D

(M040, M066)

INTRODUCTION

- A. This Performance Evaluation and Measurement Plan (PEMP) provides the standardization necessary to assure effective development, administration, and coordination of all phases of the fee determination process.
- B. The following matters, among others, are covered in the contract.
 - 1. The contractor is required to manage, operate, and maintain facilities of DOE known as the Waste Isolation Pilot Plant located near Carlsbad, NM, in accordance with the Statement of Work contained in the contract.
 - 2. The Maximum Allowable Fee is established in the contract for the ten-year contract term at Exemption 4. This PEMP allocates the fee to Performance Based Incentives.
 - 3. The Carlsbad Field Office Manager will determine the amount of Performance Based Incentive (PBI) fee earned and authorize payments within 30 calendar days of receipt of validation that a PBI has been accomplished.
- D. Fee determinations are not subject to the Disputes Clause of the contract.

ORGANIZATIONAL STRUCTURE AND DUTIES

The following organizational structure is established for administering the fee provisions of the contract.

- A. Fee Determination Official – Head of Contracting Activity (HCA), EM-3, DOE/HQ.
- B. Roles and Responsibilities

I. Carlsbad Field Office Manager

The Carlsbad Field Office Manager is the single point of organizational authority within CBFO for development and coordination of the PEMP, approval of minor changes to the PEMP or obtaining HCA approval of major changes, performance monitoring, performance validation, performance reporting, fee recommendations to the PAC and FDO, and payment of fees related to PBIs. Primary responsibilities are:

- a. In coordination with HCA's functional representatives and EM-3/HQ, develops PBIs and consolidates them into the PEMP.
- b. Assures appropriate coordination of performance expectations and PBIs with HQ program and policy organizations.
- c. Submits the PEMP to the HCA for review and approval.
- d. After HCA approval, forwards the PEMP to the contractor.
- e. Coordinates major changes with the HCA and provides minor changes to performance expectations and PBIs to the HCA.

2. Carlsbad Field Office Performance Evaluators

Performance evaluators are members of the Carlsbad Field Office responsible for the work to be measured by the PBIs. Primary responsibilities are:

- a. Develop PBIs related to assigned area.
- b. Assist in negotiation of PBIs and fee allocations with contractor.
- c. Review contractor's request for change to PBIs and recommend approval or disapproval.
- d. Monitor, evaluate, and assess the contractor's performance against the PBIs in the PEMP.
- e. Validate contractor's performance as it relates to the PBIs.

III. INCENTIVE FEE DETERMINATION PROCESS

While PEMP incentives may be unilaterally developed by DOE, a teaming approach between the Carlsbad Field Office and the contractor has significant benefits. When

incentives are developed jointly, performance expectations are better understood by the parties and tend to focus more on substantive outcomes. Teaming enhances communication and partnering between and among the parties, which results in greater trust, openness, and cooperation for achieving DOE's goals and objectives.

The PEMP is composed of PBIs, which are assessed on an objective basis with all earnable fees at risk.

A. Development of Incentives

1. Performance-Based Incentives

- a. Performance Based Incentives are characterized by objectively measurable evaluation of contractor performance. Such incentives reflect specified criteria against which actual performance will be evaluated. The PBIs will be evaluated based on quantifiable measurements.
- b. Performance Based Incentives have specified fee allocated and payable upon completion of specified levels of work accomplished.
- c. Performance Based Incentives can be determined to be annual or Multi-year. Annual PBIs will be measured and evaluated at the end of the fiscal year. Multi-year incentives will be measured and evaluated upon completion of identified work.

2. Base, Stretch and Super Stretch Incentives

- a. Performance Based Incentives are categorized as Base, Stretch, or Super Stretch.
 - 1) Base Incentives – An incentive associated with specific work that is funded in the contract and the fee is allocated from the Available Fee Pool.
 - 2) Stretch Incentives – An incentive that motivates the Contractor to accelerate work by achieving efficiencies in the overall performance on the contract. The level of the effort being measured by these incentives is not funded in the contract, but the fee is allocated from the available fee pool. In order to earn a Stretch incentive, the Contractor must perform the additional work necessary to achieve the Stretch Incentive within the funding limits established for the base Incentive. The authority to initiate activity or an

accelerated work package is at the time the incentive is created and is not subject to review by the Change Control Board if no change to the established baseline is required to accomplish the stretch incentive. If change to the established baseline is required to accomplish the stretch incentive, the established CBFO change control process as outline in the CBFO change control procedure will be utilized.

- 3) Super Stretch Incentives – An incentive that motivates the Contractor to achieve significantly more work than that incentivized by “Stretch” incentives. In order to achieve a Super Stretch Incentive, the Contractor must find cost savings in other programmatic areas adequate to fund the effort and the related fee. DOE must approve the transfer of funding to the effort through the Change Control Board process and must specifically authorize initiation of the effort. Fee allocated to a Super Stretch incentive is not considered a part of the Total Available Fee pool.

B. Approval of Incentives

The PBIs are reviewed by the Carlsbad Field Office Manager, the Carlsbad Field Office Contracting Officer and the Carlsbad Field Office program staff prior to submittal to the HCA for approval. Once approved by the HCA, the Carlsbad Field Office Manager or Carlsbad Field Office Contracting Officer provides the PEMP to the contractor.

C. Changes to Incentives

Changes to the PBIs will be limited and strictly controlled. Changes will be administered in accordance with the DOE Handbook for Incentive Fee Administration. 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

D. Monitoring Performance

1. **Monitoring Performance:** The Carlsbad Field Office will monitor contractor performance against the PBIs throughout the year. Performance will be discussed with the contractor periodically throughout the year.
2. **Validating Performance:** The Carlsbad Field Office objectively validates completion of incentive fee performance. Validation is accomplished before payment of earned fee can be made. Validation of performance is documented by the Carlsbad Field Office.

E. Fee Pool

This contract is based upon Part 970 of the Department of Energy Acquisition Regulations (DEAR) and the amount of fee available is subject to the Department's Fee Schedule process.

If a PBI is cancelled or modified, any unearned fee will be allocated to another PBI. Fee which is not earned due to nonperformance of the performance incentive requirements set forth in the PEMP shall not be returned to the fee pool but shall be forfeited.

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

SECTION J – LIST OF ATTACHMENTS

ATTACHMENT F

**KEY PERSONNEL
(M006, M012, M026, M040, M058, M066)**

Pursuant to the Contract Clause entitled “Key Personnel,” the following positions are considered to be essential to work being performed.

TITLE	NAME*
Chief Executive Officer and President	William G. Poulson
General Manager	Richard Raaz
Assistant General Manager, Site Operations and Disposal	Douglas E. Steffen
Assistant General Manager, Retrieval, Characterization, and Transportation	Farok Sharif
Chief Nuclear Engineer	Thomas J. Lex
Manager, Safety and Health	S. Craig Herndon
Manager, Quality Assurance	Michael W. Lipscomb

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

PAGE 1 OF 2
AGES

2. AMENDMENT/MODIFICATION NO. M067	3. EFFECTIVE DATE October 1, 2004	4. REQUISITION/PURCHASE REQ. NO. N/A - NOPR	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P.O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington 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-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) TBD	
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)
N/A - Not A Funding Action

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS:
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

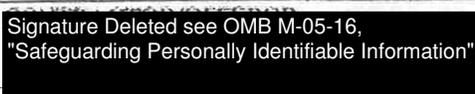
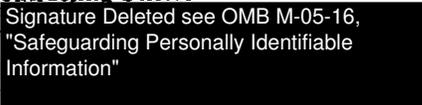
<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
<input type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in 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: Agreement of parties to incorporate Performance Based Incentives for Fiscal Year 2005
<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.)

PBI No. 1 is hereby incorporated into Section J, Attachment D of the contract for fiscal year 2005.

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) S. D. Warren, President & General Manager		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Philip N. Murphy Contracting Officer	
15B. BY 	15C. DATE SIGNED 12/30/04	16B. BY 	16C. DATE SIGNED 12/30/2004
<i>(Signature of person authorized to sign)</i>		<i>(Signature of Contracting Officer)</i>	

NSN 754-01-152-8070

PREVIOUS EDITION UNUSABLE
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STANDARD FORM 30 (REV 10-83) temp03.dot

Prescribed by GSA
FAR (48 CFR) 53.243

SECTION J, ATT. D

SECTION I – GENERAL INFORMATION

Performance Incentive Number: **CBFO-PBI No. 1** Performance Period: **04/01/03 through 09/30/05**
 Performance Incentive Short Title: **Accelerated Risk Reduction and SQS Completion**
 Revision Number and Date: Revision 1, 06/30/04; Rev. 2, 11/3/04; Rev. 3, 12/3/04

SECTION II – ACCOUNTING/PROJECT INFORMATION

Performance Period	Estimated Budgeted Cost of Work Scheduled (BCWS) under this PM: (see Section B.2 of Contract)	Available Fee Associated with this Measure: (see Section B.2 of Contract)
04/01/2003-9/30/2003	Exemption 4	Exemption 4
10/01/2003-9/30/2004	Exemption 4	Exemption 4
10/01/2004-9/30/2005	Exemption 4	Exemption 4

CBFO Management Control Packages:

SECTION III – INCENTIVE INFORMATION

Duration: Annual Multi-year X
 Fee Payment type: Completion X Progress Provisional X (See Metric 3)

SECTION IV - PERFORMANCE MEASURE

Description:

Recognizing that safe disposal of TRU waste is CBFO's primary mission, this PBI represents a fee model where earnings are at risk and the contractor is paid when specific results are achieved. The contractor will earn fee for risk reduction based on cubic meters dispositioned from the TRU waste inventory and for reducing the TRU waste footprint. Risk reduction fees will be earned in four ways:

1. For cubic meters from RFETS, INL's Advanced Mixed Waste Treatment Project (AMWTP), and Hanford disposed of at WIPP
2. For cubic meters removed from TRU waste sites except RFETS, INL's AMWTP, and Hanford
3. For clean up of legacy TRU waste from Small Quantity Sites (SQS)
4. For disposal of at least one Remote Handled (RH) shipment at WIPP

CBFO is committed to the accelerated clean up of small quantity sites. Fees for this portion of the rating plan are consistent with this commitment.

In accordance with accelerated risk reduction, the following metrics shall be used to measure performance and determine fees earned by the contractor under this Rating Plan. Schedules to meet accelerated risk reduction are contained in the latest revision of the EM-1 baseline shipping schedule and WTS' Legacy TRU Waste Risk Reduction Plan.

Metric 1: The contractor's performance will be measured quarterly for its success in the safe and compliant disposal at WIPP of cubic meters of TRU waste from RFETS, INL's AMWTP, and Hanford, as indicated in the WWIS database. TRU waste retrieved, characterized, and shipped from facilities at INL other than AMWTP will be payable under Metric 2.

For each cubic meter disposed of at WIPP from RFETS, Hanford and INL's AMWTP under Metric 1, fees will be earned as follows:

- 1 to 2000 cubic meters Exempt 4 per cubic meter
- >2,000 to 6,000 cubic meters Exempt 4 per cubic meter
- >6,000 to 10,000 cubic meters Exempt 4 per cubic meter
- >10,000 to 18,000 cubic meters Exempt 4 per cubic meter
- >18,000 cubic meters Exempt 4 per cubic meter

Note: The fee schedule above works sequentially and is cumulative over the life of the contract. For example, the contractor cannot earn fees at the Exempt 4 per cubic meter until after the first 2,000 cubic meters have been completed at the Exempt 4 rate per cubic meter.

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Metric 2: The contractor's performance will be measured quarterly for its success in safe and compliant removal of cubic meters of waste from generator sites' inventory (excluding RFETS, INL's AMWTP, and Hanford) and shipping to another site designated by DOE or to WIPP. TRU Waste retrieved, characterized, and shipped from facilities at INL other than AMWTP will be payable under this Metric.

For each cubic meter removed from a generator site inventory and transported to another site designated by DOE \$400 of fee will be earned.

For each cubic meter removed from generator site inventory and transported to WIPP for disposal, fees will be earned as follows:

- 1 to 1,000 cubic meters: \$1,300 per cubic meter
- >1,000 to 3,000 cubic meters: \$1,400 per cubic meter
- >3,000 to 5,000 cubic meters: \$1,500 per cubic meter
- >5,000 to 9,000 cubic meters: \$1,600 per cubic meter
- >9,000 cubic meters: \$2,000 per cubic meter

Note: Fee will be earned sequentially and is cumulative over the life of the contract. See example for Metric 1.

Metric 3: The contractor will clean up all legacy TRU waste from SQS sites.

Clean up of each SQS with RH TRU waste will earn the contractor \$1,200,000 of fee.

Clean up of each SQS with greater than 200 cubic meters of CH TRU waste will earn the contractor \$1,000,000 of fee. Clean up of each SQS with less than 200 cubic meters of CH TRU waste will earn the contractor \$800,000 of fee.

To earn fee under this metric, WTS must perform meaningful work. WTS must submit a work plan and description for CBFO approval for each initiative under this metric.

The Battelle Columbus Lab (BCL) cleanup activity has been suspended as a result of litigation. At present, this litigation precludes WTS from making any further TRU Waste shipments to Hanford. In accordance with the WTS Prime Contract Section B.2(b)(9), WTS requests modification of the incentive fee allocation to the BCL site from Metric 3 as a result of the litigation, which at present prevents the achievement of this performance measure. It is agreed that a partial payment for work completed at BCL will be authorized. It is further agreed that the remaining work at BCL may be restructured into an appropriate incentive.

Metric 4: The contractor will dispose of a minimum of one RH waste shipment at WIPP.

The completion of disposal of at least one shipment of RH waste in the WIPP repository will earn the contractor \$1,000,000 of fee.

SECTION V - PERFORMANCE REQUIREMENTS

PREVIOUS GATEWAY: *Describe previous gateway (if applicable) that must be completed before fee can be paid under this performance measure*
None

DEFINE COMPLETION: *Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documents/data against which completion documentation should be compared.*

Payment in any quarter for Metrics 1 and 2, below, will be earned only if the combined total cubic meters for both metrics disposed of and removed in the applicable quarter exceeds the quarterly average since April 2000 updated every 6 months. The quarterly average will be calculated based on the total cubic meters of waste disposed from the WWIS database plus the total cubic meters removed (as documented in the request for payment for Metric 2) since April 2000 divided by the number of quarters since April 2000. The quarterly average will be documented as part of the quarterly payment submittal.

Payment Metric 1: Each month, per the latest revision of the EM 1 baseline shipping schedule, TRU waste ready for shipment from RFETS, INL's AMWTP, and Hanford will be transported to WIPP for disposal. WTS will submit provisional requests for payment of 85% of the fee earned monthly, and the total fee earned will be definitized after the end of the applicable quarter, at which time the balance for the quarter would also be due. The requests for payment shall document the total cubic meters of waste from RFETS, INL's AMWTP, and Hanford disposed of in the WIPP underground repository. CBFO will verify the request submitted by the contractor from information in the WWIS database.

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Payment Metric 2: WTS will submit provisional requests for payment of 85% of the fee earned monthly, and the total fee earned will be definitized after the end of the applicable quarter, at which time the balance for the quarter would also be due. The requests for payment shall document the total cubic meters of TRU waste removed from generator site inventory and shipped to another site designated by DOE or to WIPP excluding waste from RFETS, INL's AMWTP, and Hanford. CBFO will verify the request submitted by the contractor from information in the WWIS database, or by verification documentation from the generator sites.

Payment Metric 3: WTS will submit a request for payment to CBFO after clean up of a small quantity site is completed based on the quantities of waste contained in the waste inventory table below. CBFO will verify the request submitted by the contractor from information in the WWIS database, and/or verification documentation from the generator sites.

Legacy TRU Waste inventories for SQSs were updated for FY05 and are as indicated below*:

Small Quantity Site	CH Volume (m ³)	RH Volume (m ³)
Argonne National Lab – East	114.1	5.8
Argonne National Lab – West	1.5	17.4
Battelle Columbus Lab	5.2	28.7
Bettis Atomic Power Lab	18.9	2.7
Framatome	7.3	0.0
Knolls Atomic Power Laboratories	0.0	3.1
Knolls Atomic Power Lab – NFS	54.9	0.0
Lawrence Livermore National Lab	314.2	0.0
Nevada Test Site	615.7	0.0
Paducah	TBD	0.0
Sandia National Lab	25.0	4.4
USAMC	2.5	0.0

*Additional sites and their volumes of TRU waste may be added by mutual agreement.

Payment Metric 4: WTS will submit a request for payment after the completion of disposal of at least one shipment of RH TRU waste by submitting a letter report to CBFO that documents the volume of RH TRU waste disposed in the WIPP underground repository as indicated in the WWIS database.

DEFINITIONS:

CH – Contact-Handled: Packaged TRU waste with an external surface dose rate that does not exceed 200 mrem per hour.

Clean-up or Clean up: A site is cleaned up when no defense legacy TRU waste remains on the site. Wastes that fit this definition include: CH TRU, RH TRU, CH TRU mixed, RH TRU mixed, and other waste managed as TRU waste. Legacy waste does not include waste that some small and large sites continue to generate due to decontamination and decommissioning activities and future Departmental missions.

Cubic Meters: As used herein cubic meters refers to TRU waste container volume. TRU waste container volume means the volume in cubic meters of waste of the container. For example, the volume of one 55-gallon drum is 0.21 m³, and the volume of one standard waste box is 1.88 m³.

Large Quantity Sites: Hanford Reservation, Idaho National Laboratory (INL), Los Alamos National Laboratory (LANL), Rocky Flats Environmental Technology Site (RFETS), Savannah River Site (SRS), and Oak Ridge National Laboratory (ORNL).

RH – Remote-Handled: Packaged TRU waste with an external surface dose rate that exceed 200 mrem per hour but is less than 1,000 rem per hour.

Small Quantity Sites (SQS): These sites are listed in the National TRU Waste Management Plan.

TRU: Transuranic Waste. Radioactive waste containing isotopes with an atomic number greater than 92, concentrations

SECTION J, ATT. D

greater than 100 nanocuries per gram, and a half-life of greater than 20 years

WWIS: WIPP Waste Information System

Refer to DOE M 435.1-1 for additional information.

TECHNICAL BOUNDARY CONDITIONS: (Fundamental technical assumptions that must be maintained in order to accomplish the work scope associated with this Performance Measure)

The contractor will receive government provided TRU waste packaged for shipment to WIPP at generator sites, and the contractor is fully authorized as the DOE-designated prime contract integrator to conduct activities necessary to complete applicable characterization, shipping to another site designated by DOE or to WIPP, and disposal at WIPP.

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the contractor shall meet the specific completion criteria and expectations set forth in this Performance Incentive.

In order to earn incentive fee under this Performance Incentive, WTS shall meet the specific completion criteria and expectations set forth herein.

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Report, the document(s) that should be submitted/ data that should be available/ actions to be taken by evaluator, to determine actual performance to the requirements stated above.*

Note: WTS will provide documentation that is acceptable to the Contracting Officer as determined during negotiations and included in this Rating Plan.

Metric 1 – (Completion Payment) Fee shall be payable per cubic meter disposed of from RFETS, INL's AMWTP, and Hanford times the applicable fee per cubic meter upon submittal quarterly of appropriate documentation from the WWIS database. Fee shall be provisionally payable monthly, based on 85% of the total fee earned for cubic meters of waste disposed of from RFETS, INL's AMWTP, and Hanford. The balance of the total fee earned will be due at the end of each quarter.

Metric 2 – (Completion Payment) Fee shall be payable per cubic meter times the applicable fee per cubic meter upon submittal quarterly of appropriate documentation evidencing cubic meters removed from generator site inventories and shipped to another site designated by DOE or to WIPP. Fee shall be provisionally payable monthly, based on 85% of the total fee earned for cubic meters removed from a generator site to another site or to WIPP. The balance of the total fee earned will be due at the end of each quarter. This documentation will be based on the WWIS database or chain of custody paperwork from the generator site.

Metric 3 – (Completion Payment) Fee shall be payable upon submittal of appropriate documentation supporting the cleanup of each SQS, at the applicable fee for sites completed that quarter. Documentation to support completion will be based on volumes contained herein. WTS must document the extent and scope of the work done by WTS to achieve the result.

Metric 4 – (Completion Payment) Fee shall be payable upon submittal of appropriate documentation supporting the disposal of at least one shipment of RH waste. This documentation will be based on the WWIS database.

SECTION VI - EARNINGS SCHEDULE

List percent of PM fee available for completion of each Element, and the schedule by which the fee may be earned. (Schedule identifies point(s) at which fee may be earned - does not define completion.)

PBIs will be reviewed annually to determine applicability and approval for continuation.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1 CONTRACT ID CODE

PAGE 1 OF 1 PAGES

2. AMENDMENT/MODIFICATION NO. A068	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO. 29-2005-AL66444.504	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P.O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington 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-AC29-01AL66444
	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)

89X0251.91	SR5191	TP	EY3509801	\$47,211,195	25.2	ADSCB0080	WIPP-05-0036 CA	XID #08681267
89X0251.91	SR5191	TP	EY3509900	\$5,835,090.65	25.2	ADSCB0090	WIPP-05-0036 CA	XID #08681268
89X0251.91	SR5191	TP	FS3001000	\$631,447.43	25.2	ADSCB0020	WIPP-05-0036 CA	XID #08681277
89X0251.91	SR5191	TP	FS3004000	\$222,166.58	25.2	ADSCB0020	WIPP-05-0036 CA	XID #08681278
89X0251.91	SR5191	TP	FS3005000	\$59,348.56	25.2	ADSCB0020	WIPP-05-0036 CA	XID #08681279
89X0251.91	SR5191	TP	FS3009000	\$230,361.43	25.2	ADSCB0020	WIPP-05-0036 CA	XID #08681283
89X0240.91	SR5091	TC	820202000	\$71,188.52	25.2		WIPP-05-0036 CA	
89X0249.91	SR5991	TQ	EW1001206	(\$643,634.00)		ADSHQPD0100	WIPP-05-0036 CA	
89X0224.91	SR5491	YA	WB0100000	(\$336.47)			WIPP-05-0036 CA	

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): CLAUSE NO. 1116, OBLIGATION OF FUNDS
<input type="checkbox"/>	E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u>A065</u>	\$ 523,908,182.20
Funds Obligated by this Modification No.	<u>A068*</u>	53,616,827.70
Funds Obligated since Inception of Contract		\$577,525,009.90

*Mods M066 and M067 are not funding mods.

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) Philip N. Murphy, Contracting Officer
15B. CONTRACTOR/OFFEROR	Signature Deleted see OMB M-05-16, "Safeguarding Personally Identifiable Information"
15C. DATE SIGNED	16C. DATE SIGNED 01/27/2005
BY _____ (Signature of person authorized to sign)	BY _____

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE 1 OF 1 PAGES
2. AMENDMENT/MODIFICATION NO. A069	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO. 29-2005-AL66444.505	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P.O. Box 3090 Carlsbad, NM 88220-3090		CODE	7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220			9A. AMENDMENT OF SOLICITATION NO.	
CODE _____ FACILITY CODE _____			9B. DATED (SEE ITEM 11)	
			10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
			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)

89X0251.91	SR5191	TP	EY3509801	(\$3,621,222)	25.2	ADSCB0080	WIPP-05-0045 CA
89X0251.91	SR5191	TP	EY3509900	(\$1,500,000)	25.2	ADSCB0090	WIPP-05-0056 CA

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): CLAUSE NO. 1116, OBLIGATION OF FUNDS
<input type="checkbox"/>	E. IMPORTANT. Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u> A068 </u>	\$ 577,525,009.90
Funds Obligated by this Modification No.	<u> A069 </u>	(5,121,222)
Funds Obligated since Inception of Contract	<u> </u>	\$572,403,787.90

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) President and General Manager		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Philip N. Mearns, Contracting Officer	
15B. CONT BY _____	Signature Deleted see OMB M-05-16, "Safeguarding Personally Identifiable Information"	16B. BY _____	Signature Deleted see OMB M-05-16, "Safeguarding Personally Identifiable Information"
	15C. DATE SIGNED 2/24/05		16C. DATE SIGNED 2/25/05

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE 1 OF PAGES
2. AMENDMENT/MODIFICATION NO. A070	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO. 29-2005-AL66444.506	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P.O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6)	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220			9A. AMENDMENT OF SOLICITATION NO.	
CODE			9B. DATED (SEE ITEM 11)	
FACILITY CODE			10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
			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.

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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)

89X0251.91 SR5191 TP EY3509810 \$7,500,000 25.2 ADSCB0081 WIPP-05-0046 CA XID #12097110

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): CLAUSE NO. 1116, OBLIGATION OF FUNDS
<input type="checkbox"/>	E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u>A069</u>	<u>\$ 572,403,787.90</u>
Funds Obligated by this Modification No.	<u>A070</u>	<u>\$7,500,000.00</u>
Funds Obligated since Inception of Contract	_____	<u>\$579,903,787.90</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) Philip N. Murphy, Contracting Officer Signature Deleted see OMB	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. BY	16C. DATE SIGNED
BY _____ (Signature of person authorized to sign)		BY _____ M-05-16, "Safeguarding Personally Identifiable Information"	2/26/05

NSN 754-01-152-8070
PREVIOUS EDITION UNUSABLE
MS ()

30-105

STANDARD FORM 30 (REV. 10-83) (ismc03.cnt)
Prescribed by GSA
FAR (48 CFR) 53.243

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT 1. CONTRACT ID CODE PAGE 1 OF PAGES

2. AMENDMENT/MODIFICATION NO. **A071** 3. EFFECTIVE DATE **See Block 16C** 4. REQUISITION/PURCHASE REQ. NO. 29-2005-AL66444.508 5. PROJECT NO. (If applicable)

6. ISSUED BY **U.S. Department of Energy
Carlsbad Field Office
P.O. Box 3090
Carlsbad, NM 88220-3090** CODE 7. ADMINISTERED BY (If other than Item 6) CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) **Washington 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-AC29-01AL66444** 10B. DATED (SEE ITEM 13) **December 14, 2000**

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

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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)

89X0251.91	SR5191	TP	EY3509801	\$19,084,558	25.2	ADSCB0080	WIPP-05-0052	CA	XID 12180583
89X0251.91	SR5191	TP	EY3509810	\$ 4,569,459	25.2	ADSCB0081	WIPP-05-0052	CA	XID 12180590
89X0251.91	SR5191	TP	EY3509900	\$ 2,146,906	25.2	ADSCB0090	WIPP-05-0052	CA	XID 12180595
89X0251.91	SR5191	TP	FS3001000	\$ 819,972	25.2	ADSCB0020	WIPP-05-0052	CA	XID 12180602
89X0240.91	SR5091	TC	820101000	\$ (22,079.72)	25.4	ADSTSKO	WIPP-05-0052	CA	
89X0240.91	SR5091	TC	820102000	\$ (196,657.58)	25.4	ADSTSKO	WIPP-05-0052	CA	

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): **X CLAUSE NO. I 116, OBLIGATION OF FUNDS**
- E. IMPORTANT: Contractor is not, is required to sign this document and return ___ copies to the issuing office.

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u> A070 </u>	\$ 579,903,787.90
Funds Obligated by this Modification No.	<u> A071 </u>	\$26,402,157.70
Funds Obligated since Inception of Contract		\$606,305,945.60

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) 15B. CONTRACTOR/OFFEROR BY (Signature of person authorized to sign) 15C. DATE SIGNED 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) **Stanley T. Colt, Contracting Officer** 16B. UNITED STATES OF AMERICA Signature Deleted see OMB M-05-16, "Safeguarding Personally Identifiable Information" BY 16C. DATE SIGNED **3/28/2005**

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT 1. CONTRACT ID CODE PAGE 1 OF 1 PAGES

2. AMENDMENT/MODIFICATION NO. **A072** 3. EFFECTIVE DATE **See Block 16C** 4. REQUISITION/PURCHASE REQ. NO. **29-2005-AL66444.509** 5. PROJECT NO. (If applicable)

6. ISSUED BY **U.S. Department of Energy
Carlsbad Field Office
P.O. Box 3090
Carlsbad, NM 88220-3090** 7. ADMINISTERED BY (If other than Item 6) CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) **Washington 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-AC29-01AL66444** 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)

89X0251.91	SR5191	TP	EY3509801	\$1,401,126	25.2	ADSCB0080	WIPP-05-0066	CA
89X0251.91	SR5191	TP	EY3509810	\$ 458,000	25.2	ADSCB0081	WIPP-05-0066	CA

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): **X** **CLAUSE NO. I 116, OBLIGATION OF FUNDS**
- E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u>A071</u>	<u>\$606,305,945.60</u>
Funds Obligated by this Modification No.	<u>A072</u>	<u>\$1,859,126.00</u>
Funds Obligated since Inception of Contract		<u>\$608,165,071.60</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) **Philip N. Murphy, Contracting Officer**
15B. CONTRACTOR/OFFEROR 15C. DATE SIGNED 15B. Signature Deleted see OMB M-05-16, "Safeguarding Personally Identifiable Information" 16C. DATE SIGNED **5/23/05**
BY (Signature of person authorized to sign) BY

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

PAGE 1 OF 1
PAGES

2. AMENDMENT/MODIFICATION NO.
A073

3. EFFECTIVE DATE
See Block 16C

4. REQUISITION/PURCHASE
REQ. NO. 29-2005-AL66444.510

5. PROJECT NO. (If applicable)

6. ISSUED BY
U.S. Department of Energy
Carlsbad Field Office
P.O. Box 3090
Carlsbad, NM 88220-3090

CODE

7. ADMINISTERED BY (If other than Item 6)

CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)

Washington 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-AC29-01AL66444

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)

89X0251.91	SR5191	TP	EY3509801	\$10,989,435	25.2	ADSCB0080	WIPP-05-0079	CA
89X0251.91	SR5191	TP	EY3509810	\$ 3,955,676	25.2	ADSCB0081	WIPP-05-0079	CA
89X0251.91	SR5191	TP	EY3509900	\$ 6,592,794	25.2	ADSCB0090	WIPP-05-0079	CA
89X0251.91	SR5191	TP	FS3001000	\$ 571,910	25.2	ADSCB0020	WIPP-05-0079	CA

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):

X **CLAUSE NO. I 116, OBLIGATION OF FUNDS**

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No.	<u> A072 </u>	\$608,165,071.60
Funds Obligated by this Modification No.	<u> A073 </u>	\$22,109,815.00
Funds Obligated since Inception of Contract		\$630,274,886.60

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)
Stanley T. Colt, Contracting Officer

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

BY _____
(Signature of person authorized to sign)

Signature Deleted see OMB M-05-16,
BY "Safeguarding Personally Identifiable Information"

7/27/05

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE PAGE 1 OF 1
PAGES

2. AMENDMENT/MODIFICATION NO. A074	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO. 29-2005-AL66444.511	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P.O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington 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-AC29-01AL66444
	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)							
89X0251.91	SR5191	TP	EY3509801	\$1,251,655	25.2	ADSCB0080	WIPP-05-0093 CA
89X0251.91	SR5191	TP	FS3001000	\$ 237,000	25.2	ADSCB0020	WIPP-05-0093 CA

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): CLAUSE NO. 1116, OBLIGATION OF FUNDS
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return ___ copies to the issuing office.	

The Department of Energy hereby revises the Obligation of Funds as follows:

Funds Obligated through Modification No. <u>A073</u>	\$630,274,886.60
Funds Obligated by this Modification No. <u>A074</u>	\$1,488,655
Funds Obligated since Inception of Contract	\$631,763,541.60

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) Philip N. Murphy, Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. U Signature Deleted see OMB M-05-16, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED 8/25/05
BY _____ (Signature of person authorized to sign)		BY _____	