

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) <input checked="" type="checkbox"/>		RATING N/A	PAGE OF PAGES 2 of 561		
2. CONTRACT NO. TBD	3. SOLICITATION NO. DE-RP28-08RW11003	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED May 13, 2008	6. REQUISITION/PURCHASE NO. See Clause B.2		
7. ISSUED BY U.S. DEPARTMENT OF ENERGY OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT OFFICE OF PROJECT MANAGEMENT & PROCUREMENT PROCUREMENT DIVISION 1551 HILLSHIRE DRIVE LAS VEGAS, NV 89134-6321		CODE MOSD	8. ADDRESS OFFER TO (If other than Item 7) (Overnight Mail Only) U.S. DEPARTMENT OF ENERGY OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT ATTN: MARC T. MCCUSKER CONTRACTING OFFICER 1160 Town Center Drive, Suite 110 LAS VEGAS, NV 89144				
NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".							
SOLICITATION							
9. Sealed offers in original and (number and kind of copies are specified in Section L) copies for furnishing the supplies and/or services in the Schedule will be received at the place specified in item 8, until 1600 hours local time on July 24, 2008 .							
10. FOR INFORMATION CALL: <input checked="" type="checkbox"/>	A. NAME Marc T. McCusker Contracting Officer		B. TELEPHONE (Include area code) (NO COLLECT CALLS) (702) 794-5514		C. E-MAIL ADDRESS Marc_McCusker@ymp.gov		
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OFFER (Must be fully completed by offeror)							
NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.							
12. In compliance with the above, the undersigned agrees, if this offer is accepted within <u>180 days</u> calendar days (60 calendar days unless a different period is inserted by the offeror) from the date of receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.							
13. DISCOUNT FOR PROMPT PAYMENT Not Applicable <input checked="" type="checkbox"/>		10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %		
14. ACKNOWLEDGEMENTS OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:		AMENDMENT NO. S001	DATE 5/30/2008	AMENDMENT NO. S004	DATE 9/16/2008		
		S002	6/20/2008				
		S003	6/26/2008				
15A. NAME AND ADDRESS OF OFFEROR USA Repository Services LLC 106 Newberry Street SW Aiken, SC 29803 Cage: 54670 Duns #: 827077079	CODE FACILITY		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) David A. Pethick, Chairman				
15B. TELEPHONE NO. (Include area code) 803-501-9972	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/>		17. SIGNATURE <i>David A. Pethick</i>	18. OFFER DATE 7/24/08			
AWARD (To be completed by Government)							
19. ACCEPTED AS TO ITEMS NUMBERED		20. AMOUNT		21. ACCOUNTING AND APPROPRIATION See Clause B-2			
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION. Not Applicable <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()				23. SUBMIT INVOICES TO ADDRESS SHOWN IN Not Applicable <input checked="" type="checkbox"/>		ITEM	
24. ADMINISTERED BY (If other than Item 7) CODE See Section G Clause entitled "Government Contacts"				25. PAYMENT WILL BE MADE BY CODE See Section I Clause entitled "Payments and Advances"			
26. NAME OF CONTRACTING OFFICER (Type or print) Marc T. McCusker Contracting Officer		27. UNITED STATES OF AMERICA <i>Marc T. McCusker</i> (Signature of Contracting Officer)		28. AWARD DATE 10/30/08			

PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

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SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 SERVICE BEING ACQUIRED

The Contractor shall, in accordance with the terms of this contract, provide the personnel, materials, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, providing its best efforts so as to carry out in an efficient and cost-effective manner all necessary related services to manage the programs and operate the facilities as described in the Statement of Work in Section C of this Contract.

B.2 OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS

The amount presently obligated by the Government with respect to this contract is \$0. Other financial limitations are also specified in Section I Clause, “DEAR 970.5232-4, Obligation of Funds.”

B.3 TRANSITION COST, CONTRACT TYPE, ESTIMATED COSTS, MAXIMUM AVAILABLE FEE, AND TOTAL AVAILABLE FEE

(a) Transition Cost

The transition activities shall be performed on a cost-reimbursement basis up to the amount specified in Section H Clause, “Activities During Contract Transition,” and no fee shall be paid for these activities.

The Total Estimated Cost for the Transition Period of the Contract is:

<u>Transition Period of the Contract</u>	<u>Total Estimated Cost</u>
January 01, 2009 – March 31, 2009	\$4,945,858

(b) Contract Type

This Contract is a cost-plus-award-fee management and operating type contract employing both performance incentives and special emphasis areas. The Estimated Costs are set forth below in paragraph (c). The Maximum Available Fee and Total Available Fee are set forth below in paragraph (d).

(c) Total Estimated Costs

The Estimated Costs of the specific Contract periods, exclusive of the Contractor's total available fee, is set forth below:

Contract Period	Total Estimated Costs
Base Contract Periods	
April 1, 2009 – March 31, 2010	\$345,377,500
April 1, 2010 – March 31, 2011	\$361,202,000
April 1, 2011 – March 31, 2012	\$330,984,500
April 1, 2012 – March 31, 2013	\$259,595,000
April 1, 2013 – March 31, 2014	\$232,785,000
Total Base Contract Estimated Costs	<u>\$1,529,944,000</u>
Option Years Periods	
April 1, 2014 – March 31, 2015	\$249,870,500
April 1, 2015 – March 31, 2016	\$278,613,000
April 1, 2016 – March 31, 2017	\$231,923,500
April 1, 2017 – March 31, 2018	\$162,355,500
April 1, 2018 – March 31, 2019	\$116,247,500
	<u>\$1,039,010,000</u>
Total Estimated Costs	<u>\$2,568,954,000</u>

(d) Maximum Available Fee and Total Available Fee

- (1) The total available fee for the base period of the contract, beginning April 1, 2009, and the option periods, if exercised, are shown below. The total available fee shall be made available in accordance with Section I Clause entitled, DEAR 970.5215-1 "Total Available Fee: Base Fee Amount and Performance Fee Amount." Since the total available fee for each period has been

established below, there will be no annual negotiation of total available fee at the beginning of each fiscal year as contemplated in paragraph (b) of the above referenced clause.

Performance Period	Estimated Fee Base	Maximum Available Fee	Total Available Fee
Base Contract Performance Periods			
April 1, 2009 – March 31, 2010	\$288,615,225	\$18,615,225	\$17,715,872
April 1, 2010 – March 31, 2011	\$310,448,110	\$18,252,414	\$18,017,028
April 1, 2011 – March 31, 2012	\$289,301,698	\$18,037,826	\$17,673,076
April 1, 2012 – March 31, 2013	\$226,069,406	\$15,611,739	\$11,702,799
April 1, 2013 – March 31, 2014	\$202,769,668	\$14,239,944	\$11,412,211
Option Years Performance Periods			
April 1, 2014 – March 31, 2015	\$199,239,681	\$13,879,611	\$10,117,770
April 1, 2015 – March 31, 2016	\$206,227,107	\$13,873,796	\$9,536,593
April 1, 2016 – March 31, 2017	\$182,911,500	\$12,424,443	\$9,510,176
April 1, 2017 – March 31, 2018	\$138,781,034	\$10,630,880	\$9,197,925
April 1, 2018 – March 31, 2019	\$96,831,976	\$ 7,956,967	\$7,110,970
Total Available Fee			\$121,994,420

- (2) At the end of each performance period specified above, there shall be no adjustment in the amount of the total available fee based on differences between any estimate of cost for performance of the work and the actual cost for performance of the work. Fee is subject to adjustment only under the provisions of the clause in Section I entitled, DEAR 970.5243-1 “Changes”; and, for a plus or minus 10% change in the estimated fee base for the applicable performance period upon which the awarded contract was based. Any adjustment in the amount of the fee under the provision of this paragraph for fees specified in paragraph (d)(1) above, shall take into consideration the ratio (see equation below) between the Contractor’s total available fee specified in (d)(1) above of the original contract and the maximum fees specified in (d)(1) above.

The revised fee will be calculated in accordance with the fee policy then in effect, utilizing the adjusted fee base, while maintaining the ratio described above.

$$\frac{\text{Total Available Fee for Applicable Performance Period}}{\text{Maximum Available Fee for Applicable Performance Period}} = \text{Ratio}$$

- (3) The CO may mutually negotiate with the Contractor additional available fee for additional work that is not covered by the available budget. The funds for such work and the associated available fee shall be funded through the Contractor’s efficiencies in accomplishing the otherwise funded work. The additional work shall be performed in a safe manner that meets all necessary requirements; and the performance of the additional work shall not affect the safe, proper performance of the otherwise funded work. Any additional work shall be authorized in accordance with the provision in Section H entitled, “Work Authorization System” and the basis for earning the additional available fee shall be included in the Performance Evaluation and Measurement Plan (PEMP).

B.4 ALLOWABILITY OF SUBCONTRACTOR FEE

- (a) If the Contractor is part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in this Contract fee structure and separate additional subcontractor fee for teaming partners shall not be considered an allowable cost under the contract. If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit earned by such entity shall not be considered an allowable cost under this contract unless otherwise approved by the Contracting Officer.
- (b) The subcontractor fee restriction in the paragraph (a) does not apply to members of the Contractor’s team that are: (1) small business(es); (2) Protégé firms as part of an approved Mentor-Protégé relationship under the Section H Clause entitled, *Mentor-Protégé Program*; (3) subcontractors under a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, *Definitions of Words and Terms*.

B.5 PROVISIONAL PAYMENT OF PERFORMANCE FEE

The Contractor may, subject to the approval of the Contracting Officer, be paid provisional performance fee payments consistent with the provisions of Section I Clause “DEAR 970.5232-2, Payments and Advances.” The Contractor shall promptly refund to the Government any amount of provisional performance fee

paid that exceeds the amount of performance fee earned.

B.6 FEE AVAILABLE UPON TERMINATION

In the event this contract is terminated for the Government's convenience, either in whole or in part, the amount of award fee available shall represent a pro rata distribution associated with the evaluation period activities or events as determined by the Contracting Officer.

B.7 KEY PERSONNEL REPLACEMENT

Unless approved in advance, in writing, by the CO, should any Key Personnel be removed, replaced, or diverted by the Contractor for reasons under the Contractor's control (other than to maintain satisfactory standards of employee competency, conduct, and integrity under the clause in Section I entitled, DEAR 970.5203-3 "Contractor's Organization") within the first two years of performance from the effective date of the contract (SF 33, Block 2); or for a replacement Key Person within two years of being placed in the position, the Contractor shall forfeit \$1,000,000 in fee if said Key Person is the chief executive, and \$500,000 in fee for each occurrence with all other Key Personnel.

PART I – THE SCHEDULE

SECTION C

DESCRIPTION/SPECIFICATION/WORK STATEMENT

PART I – THE SCHEDULE

**SECTION C
DESCRIPTION/SPECIFICATION/WORK STATEMENT**

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PART I – THE SCHEDULE

SECTION C

DESCRIPTION/SPECIFICATION/WORK STATEMENT

Description of Work and Services

Statement of Work

1.0 GENERAL INFORMATION

This document describes the Statement of Work (SOW) of the Management and Operating Contractor (M&O) Contract for the U.S. Department of Energy (DOE), Office of Civilian Radioactive Waste Management (OCRWM) Program's Yucca Mountain Project (YMP). An M&O contract is defined at Federal Acquisition Regulation (FAR) 17.6 and Department of Energy Acquisition Regulation (DEAR) 970.

Inasmuch as the assigned mission of OCRWM YMP is dynamic, this SOW is not intended to be exclusive or restrictive, but is intended to provide a broad framework and general scope of work to be performed by the M&O. This SOW does not represent a commitment to, or imply funding for, specific projects or activities. All projects and activities will be authorized by OCRWM in accordance with the terms and conditions of this Contract.

This SOW provides for the M&O supporting the design of the Yucca Mountain (YM) repository, defense and update of the License Application (LA), operation of the Yucca Mountain Site (Site), preparation of construction performance specifications and equipment procurement specifications, integration and management of the OCRWM Program milestone schedule and baseline, and support for OCRWM in construction management and integration of repository construction.

The M&O shall implement a fully-integrated management system in compliance with OCRWM requirements and shall implement quality, timely, and cost-effective programs and operations. The M&O shall protect the environment and ensure the health, safety, and security of employees and the public. In addition to performing the contract work, the M&O shall implement appropriate program, project, and quality management systems to track progress and increase cost effectiveness of work activities; balance good business decisions with fiscal efficiency, including implementing an effective make or buy process that reflects best value judgment; develop integrated plans and schedules to achieve program objectives on time; maintain sufficient resources to manage activities and execute technical projects throughout the life of the activity; utilize appropriate technologies to reduce costs and improve performance; maintain facilities, infrastructure, and equipment necessary to accomplish assigned missions; protect classified, controlled, and proprietary information; and accomplish work safely.

1.1 The Site and M&O Workforce Location Information

The Site occupies approximately 146,000 acres (225 square miles) in a remote area of Nye County about 100 miles northwest of Las Vegas, Nevada. The Site consists of the western edge of the DOE's Nevada Test Site (NTS), and land managed by the U. S. Bureau of Land Management (BLM) and the U.S. Air Force (USAF). During the 1990s, OCRWM developed the Exploratory Studies Facility (ESF) complex which consists of approximately seven miles of tunnels, infrastructure, and temporary facilities and structures. Use of land at the Site is currently authorized via memoranda of agreement and right-of-way reservations.

The M&O shall take responsibility for the ESF complex and its current configuration, which includes the tunnel complex, two finished structures, plus several dozen temporary structures (e.g., trailers and Sea-Land Containers, etc.) and miscellaneous heavy and light duty equipment and materials. The ESF complex is the planned location for nuclear surface facilities and underground emplacement areas. No repository-phase surface systems, structures or components (SSC) have been constructed.

The preponderance of the current M&O employees work in leased office space in Las Vegas, Nevada, with the current lease expiration in 2011. Additionally, the current M&O operates a site office and science center in Pahrump, Nevada, an OCRWM Headquarters support office, and a Licensing Support Office in Washington, DC. Space requirements in the Washington, DC, area are to be minimized as the functions to be performed and supported at this location are expected to be a small fraction of the overall contract effort.

1.2 Compliance with Requirements

In performing work under this contract, the M&O shall comply with the applicable federal, state and local laws and regulations (including DOE regulations). The M&O shall comply with the requirements, or parts thereof, identified in the List of Applicable Directives (see Section J, Appendix E, for a tailored set of requirements developed under a DOE-approved process). The M&O is responsible for assuring compliance with the contract requirements regardless of whether the M&O self-performs or subcontracts the work.

Key regulatory requirements include repository licensing and performance requirements established under 10, Code of Federal Regulations (CFR), Section 63, 10 CFR Section 20, and 10 CFR Section 961. Other regulatory requirements may include, but are not limited to, the Occupational Safety and Health Act, and Mine Safety and Health Act, and environmental protection regulations. Compliance with requirements under 10 CFR 63 does not exempt or preclude the M&O from compliance with other regulations.

1.3 Program Integration, Roles and Interrelationships

The M&O shall support OCRWM in integration of all OCRWM program activities including repository development, interface and coordination with the Nevada rail line design and construction, and National Transportation Project waste acceptance and transportation activities. The M&O shall support OCRWM in the identification and integration of the work of the other organizations and prime contractors supporting the OCRWM Program in the accomplishment of Program milestones.

The M&O shall coordinate the integration of the following government agencies, contractors, etc. All contractual direction shall be through OCRWM.

1.3.1 DOE OCRWM

The DOE is responsible for the development of the nation's high-level, nuclear waste disposal system. The Nuclear Waste Policy Act (NWPA) of 1982, as amended (Public Law 97-425; 42 U. S. Code 10101), established OCRWM within DOE and assigned it the responsibility to design, construct, and operate a system for spent nuclear fuel (SNF) and high-level radioactive waste (HLW) disposal, including a permanent geologic repository, and transportation system. In implementing this mission, OCRWM will be the licensee and is responsible for all programmatic interactions and interfaces with the U.S. Nuclear Regulatory Commission (NRC). Additionally, OCRWM is responsible for all programmatic, policy and funding decisions; the establishment of goals and objectives; monitoring and measuring the performance of the M&O; direction for the Lead Laboratory; and performance of all inherently governmental functions (see FAR 7.5). OCRWM reserves the right to intervene, as necessary and appropriate, to redirect Program activities for the purposes of assuring OCRWM retains its ownership, accountability, fiduciary and licensing responsibilities. Specific work activities and schedules under this contract may be impacted by congressional funding and legislation. OCRWM will routinely interact with the NRC as well as such bodies and organizations as the Nuclear Waste Technical Review Board and the Advisory Counsel on Nuclear Waste and Materials, etc.

1.3.2 DOE Office of Environmental Management

Planned repository disposal inventory includes HLW and SNF managed by the DOE Office of Environmental Management (EM). The DOE EM has participated in the development and content of the LA and program strategies for waste transportation and disposal.

1.3.3 U.S. Nuclear Regulatory Commission

By Act and regulation, the NRC is vested with the responsibility of licensing and oversight of OCRWM YMP. Upon DOE's tendering of the LA, the NRC is responsible for review, hearing and decision on the LA. Additionally, throughout the licensing and construction phases of the project, the NRC will conduct inspections and routinely interact with OCRWM. The NRC is afforded unfettered access to all OCRWM and M&O staff and other direct contractor staff.

1.3.4 Naval Nuclear Propulsion Program

Planned repository disposal inventory includes SNF from the Naval Nuclear Propulsion Program (NNPP). The NNPP has participated in the development and content of the LA and program strategies for waste transportation and disposal. The M&O's primary interface with the NNPP will be for design, LA defense, and LA update.

1.3.5 The Management and Operating Contractor

The M&O shall, in accordance with the terms and conditions of this contract, provide the management expertise and leadership necessary and appropriate to support OCRWM in accomplishing its mission and to perform the work described in this SOW. The M&O is fully accountable for the entire scope of work as described in this SOW, with special emphasis on accomplishing the performance-based incentives and special emphasis areas defined in Section J, Appendix J of the contract. The M&O shall support OCRWM in its mission and shall interact with other OCRWM direct contractors and organizations or entities as defined in this section, as directed by OCRWM.

1.3.6 Lead Laboratory

The DOE has designated Sandia National Laboratories – Lead Lab, as the OCRWM Lead Laboratory for Repository Systems. The Lead Laboratory is responsible for and interfaces with the M&O on the development and defense of the post-closure safety basis, including the performance confirmation program. The M&O's primary interfaces with the Lead Laboratory will be:

- Obtaining scientific support for design and input for preclosure safety analysis.
- License update and amendment support (the Lead Laboratory is responsible for 18 sections of the LA).
- Information system network synchronization with other system users.
- Information system support of legacy systems that are the management responsibility of the Lead Laboratory, but reside on systems that cannot currently be transferred to the Lead Laboratory. Examples include the Technical Data Management System and the Curatorial Sample Inventory and Tracking System.
- Unified reporting of integrated plan, schedule and cost results.

1.3.7 U.S. Geological Survey

OCRWM has established an Interagency Agreement with the U. S. Geological Survey (USGS). The USGS provides data and support in areas including the Site geology, hydrology, and inputs to the Lead Laboratory in Total System Performance Assessment (TSPA). The M&O's interface with USGS will be through OCRWM.

1.3.8 U.S. Air Force

OCRWM has established formal communication processes with the USAF. The USAF provides air traffic control and logistics over the Site and will enforce the flight-restricted airspace over the Site.

1.3.9 U. S. Federal Aviation Administration

OCRWM has an interface with the U. S. Federal Aviation Administration dealing with aircraft counts around the Site.

1.3.10 U.S. Bureau of Land Management

OCRWM has interactions with BLM since some of the areas which will be part of the land withdrawal are presently under BLM management.

1.3.11 National Nuclear Security Administration

Initial site operations may require a coordination provision of services by the National Nuclear Security Administration's (NNSA) Nevada Site Office and their respective M&O contractor (SOW, Section 8.3.11).

1.3.12 OCRWM Construction Contractors

Prior to NRC Construction Authorization (CA), OCRWM intends to award a number of separate OCRWM direct contracts for the construction of the repository. Repository construction will occur after CA and includes the construction of surface nuclear facilities, surface non-nuclear facilities, underground emplacement drifts, underground non-emplacement tunnels, ventilation shafts, and associated infrastructure development. As part of executing this SOW, the M&O shall support OCRWM in the construction management, oversight, and integration of construction activities by these OCRWM Construction Contractors.

1.3.13 OCRWM Repository Operation Contractor

Following NRC issuance of CA, OCRWM intends to award a separate OCRWM direct contract to support OCRWM in the operation of the repository. Repository operation contractor scope will include turnover and start-up and, following NRC issuance of a License to Receive and Possess, will result in operation of the nuclear facilities. As part of executing this SOW, the M&O shall support OCRWM in the interface of design and construction management with the OCRWM Repository Operation Contractor. In addition, the M&O shall be responsible for conducting initial system performance testing including cold repository system turnover, and start-up testing. Such testing shall be coordinated with the Repository Operations Contractor.

1.3.14 Other OCRWM Direct Contractors

As part of executing this SOW, the M&O may, as necessary and as directed by OCRWM, interact with the following OCRWM and OCRWM direct contractors: a litigation support contractor for development and maintenance of the Licensing Support Network (LSN); a legal support contractor providing guidance on licensing and licensing strategy; a general technical support services contractor which provides support and strategy to OCRWM on various design, construction, science, operations, environment, safety and health issues; and, potentially, a licensing technical support services contractor which provides support and strategy to OCRWM on licensing, nuclear construction, and operations issues.

1.3.15 OCRWM Nevada Rail Line Contractors

The OCRWM intends to award separate design/build contracts for design and construction of a rail line terminating at the repository. As part of executing this SOW, the M&O will interface with these contractors in the design of the rail point of interface with the geologic repository operations area. See also section 16 of this SOW.

1.3.16 Nye County

Nye County is the situs county for the repository project. In addition, OCRWM cooperatively funds Nye County to conduct an independent scientific program both on and off the Site. As part of executing this SOW, the M&O will interact with representatives of the Nye County government. Such interactions shall be done in close coordination with OCRWM.

1.3.17 Other Affected Units of Local Government

As part of implementing the NWPA, the OCRWM interacts with Affected Units of Local Government (AULG). This interaction includes information sharing, and cooperative funding, and payment equal to taxes. As part of executing this SOW, the M&O may be required to interact with AULG representatives. Such interactions shall

be done in close coordination with OCRWM.

1.3.18 Timbisha Shoshone Tribe and the Native American Interaction Program

The U.S. Department of the Interior has designated the Timbisha Shoshone Tribe, located primarily in the Death Valley area, as an Affected Tribe. Additionally, OCRWM interacts with 14 other tribes and organizations with cultural or historic connections to the Site. As part of executing this SOW, the M&O may interact with Timbisha Shoshone or other tribal members or representatives. Such interactions shall be done in close coordination with OCRWM.

2.0 OCRWM SUMMARY DESCRIPTION OF WORK

The M&O shall manage, operate, and enhance OCRWM's ability to accept, manage, and dispose of SNF and HLW. To meet this objective, the M&O shall:

- Provide Project Management and Baseline Control for OCRWM program activities and support business operations and activities.
- Support OCRWM in LA defense, LA update or amendment, including technical expertise in hearings.
- Develop detailed and final construction-ready design for the entire repository. Function as the designer of record. Develop construction performance specifications, equipment procurement specifications, and procure repository long-lead and specialized equipment. Develop performance specifications and draft bid packages for OCRWM direct contracting of repository facilities. Participate in constructability and operability reviews with Construction Contractors and Operations Contractors.
- Manage and operate the ESF complex and the Site prior to the NRC issuing CA.
- Following NRC issuing CA, prepare the Site for construction mobilization including the design and construction of infrastructure readiness and safety upgrades.
- Provide construction support during repository construction.
- Support OCRWM in construction management, oversight and integration of repository construction.
- Integrate with the OCRWM Repository Construction and Operation Contractors.
- Support OCRWM in developing strategies for offsite facilities and work locations.
- Support OCRWM headquarters.
- (If directed) Support the OCRWM Transportation Program

The SOW elements are discussed in detail in the sections that follow.

3.0 MANAGEMENT WORK SCOPE

3.1 Summary

This section establishes the management products and controls required during the Contract period. OCRWM intends that activities under this SOW be managed under the OCRWM configuration management model and in accordance with the project management requirements established in DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets, dated 07/28/2006, and any subsequent revisions thereto. OCRWM has developed a Project Execution Plan (PEP) which has established the overall direction for OCRWM and all contractor project management activities, including baseline control, life-cycle planning, and details to be provided by the OCRWM configuration management model which include document hierarchy, configuration management, change management, requirements management, design management, records management, data management, and technical integration and automation. In executing this SOW, the M&O shall establish effective management structure, project management, project controls, and business operations to ensure meeting the key design, licensing, and site management milestones identified in Section J appendix M, the functional and technical requirements of the PEP and OCRWM configuration management model. This will result in quality work execution, schedule adherence, and cost control by the M&O.

The M&O shall incorporate a process for Decision Management within the project management system to maintain traceability of decisions that fall outside of the formal Change Control Processes.

The M&O shall focus on the following areas when planning and executing tasks within the project management area:

- A). Project integration management to ensure that the various project elements are effectively coordinated.
- B). Project configuration management as defined by the OCRWM configuration management model which implements specific business workflow processes.
- C). Project scope management to ensure that all the work required (and only the required work) is included.
- D). Project time management to provide an effective project schedule.
- E). Project cost management to identify needed resources and maintain budget control.
- F). Project quality management to ensure functional requirements are met.
- G). Project human resources management to develop and effectively employ project personnel.
- H). Project communications management to ensure effective internal and external communications.
- I). Project risk management to analyze and mitigate potential risks.
- J). Project procurement management to obtain necessary resources from external sources.

3.2 Transition Activities

The M&O shall execute transition activities as identified in the Transition Plan identified in Section J, Appendix K, of the Contract. These transition activities shall include, at a minimum, the approach and schedule for:

- 3.2.1 Prioritizing transition of design, preclosure safety analysis, and licensing activities in this SOW, including the business workflow and configuration control processes. Transition of design, preclosure safety analysis, and licensing activities shall be accomplished within the 90-day transition period. The remaining SOW transition schedule shall be negotiated between OCRWM and the M&O following the award.
- 3.2.2 Achieving commensurate staffing supporting elements of this SOW in accordance with the transition plan. Staffing identified in Section J, Appendix D, will be prioritized and staffing identified in Section J, Appendix F will be accomplished within 180 days of contract award. Remaining staff will be secured expeditiously in accordance with available funds and not exceeding 12 months from contract award, including any transfer of staff originating from the incumbent M&O.
- 3.2.3 Examining subcontracts currently held by the incumbent M&O, affirming those necessary to implement the work scope, and executing any new subcontracts necessary to implement work scope.
- 3.2.4 Performing due diligence review of existing items, materials and processes, including but not limited to: technical information, processes, plans, procedures, permits, property, etc. This review is not intended as a redesign since the existing design is to be adopted with expansion and completion being desired outcomes.
- 3.2.5 Establishing program and activities necessary to implement the SOW (e.g., environmental compliance, safety, security, quality assurance, etc).
- 3.2.6 Evaluating the existing current contractor proprietary software suite of engineering automation tools to identify which items will be replaced by the M&O's tools, and which items will be used from the software suite for some period of time not to exceed 18 months after award of the contract.
- 3.2.7 Establishment of any internal project management systems for use by the M&O, based on the OCRWM configuration management model.
- 3.2.8 Evaluating the OCRWM Program integrated baseline and the master summary schedule and Project Execution Plan.

3.3 Management

The M&O shall establish an effective corporate structure and organizational management structure to implement the SOW. The corporate structure and organizational management structure and model shall be described in the project management plan (discussed in the section below). The organization and management model described in the plan shall provide management and key staff, critical staff, supervision and staffing necessary to accomplish the SOW. Management and supervision ratios to staff shall be proportionate with work scope and optimized where possible for maximum staff to supervisor ratio. Management structure shall consider and support project structure and control requirements of DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets, dated 07/28/2006, and any subsequent revisions thereto. The M&O shall identify and staff key management positions and staff critical position functions as defined in Section J, Appendix D and F, of the Contract.

3.4 Project Management Planning

The M&O shall establish and implement effective project management plans and project control processes to assure appropriate planning, control and reporting of work scope progress and cost. As part of project management, the M&O shall evaluate and update the OCRWM Project Execution Plan following contract award and as required thereafter. The M&O shall prepare a subordinate project management plan (PMP) that describes the approach for managing and controlling elements described in this SOW. The PMP shall be submitted to OCRWM for concurrence within two months of contract full performance.

- 3.4.1 The M&O shall include within the PMP, at a minimum a description of the following: the M&O's management approach and structure; internal project control system; the configuration control process; the commitment management process; the risk management process; the financial management and cost reporting processes; and baseline and schedule reporting to OCRWM.
- 3.4.2 The PMP shall be revised and submitted to OCRWM for concurrence as part of each CD deliverable or as project execution changes dictate.

3.5 Project Control System

The M&O shall establish, maintain, and use a project control system that supports the successful execution of the SOW utilizing a work breakdown system consistent with the standards defined by OCRWM and its Configuration Management Model. The Project Control System must meet the intent of the requirements of OCRWM PEP and shall be described in the M&O's PMP. Additionally, the Project Control System shall produce: accurate and timely planning, budgeting, reporting and change control data; and meet the requirements of DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets, dated 07/28/2006, and any subsequent revisions thereto; and DOE Manual 413.3-1, Project Management for the Acquisition of Capital Assets, dated 03/28/2003, and any subsequent revisions thereto. The M&O shall include in its Project

Control System the ability for OCRWM and other entities as defined by OCRWM to review its project control and management activities. These reviews shall be on a periodic basis as part of OCRWM's oversight activities.

3.5.1 The project control system shall, at a minimum:

- A). Adopt OCRWM work breakdown structure (WBS) and the WBS dictionary; adopt the OCRWM configuration management model and PEP; provide the organizational breakdown structure, including roles and responsibilities of each major organization and identification of key management personnel and critical staff; and define and document the interfaces between OCRWM and other entities or organizations necessary to execute the SOW.
- B). Define and document the approach for implementing the following:
 - a. Project management for all 413.3A identified projects.
 - b. Engineering design development including system and value engineering.
 - c. Configuration management including consistency with LA requirements and OCRWM commitments.
 - d. Design and technical requirement change and configuration control.
 - e. Baseline change control.
 - f. Contract management.
 - g. Performance measurement.
 - h. Information and reporting.
 - i. Interface management.
 - j. Work authorization.
 - k. Work management.
 - l. Risk management.
 - m. Construction project management.
 - n. Business system operations.

3.5.2 The M&O shall establish a formal configuration change management board and a cost and schedule change control board. Both boards shall interface with and are subordinate to the OCRWM Change Control Board.

3.6 Project Control Schedule and Baseline Management

3.6.1 The M&O's project control system shall adopt the OCRWM Level 1 Management Schedule and the OCRWM Integrated Baseline. The M&O will review and validate the Management Schedule and Integrated Baseline. Changes to the Schedule or the Baseline, including improvements to the Baseline which reduce cost or schedule and improve design, constructability, or operability, will be evaluated and authorized under the OCRWM Change Control Board. The M&O shall manage and maintain the OCRWM Integrated Baseline and Master Summary Schedule and shall implement any OCRWM-directed changes to the Baseline. A milestone schedule containing selected Level 1 and 2 milestones associated with this SOW is contained in Section J, Appendix M.

- 3.6.2 The M&O shall develop and maintain a Level 2 schedule and baseline that implements the Level 1 Management Schedule and the OCRWM Integrated Baseline. The M&O's PMP shall define, control, and integrate with the Level 2 schedule and baseline. The Level 2 schedule and baseline shall be utilized to track activities and associated schedule and cost for development of the YM repository assets. Level 3 (and lower) milestone schedule and baseline shall be developed, as necessary, for project design and execution of each repository asset (e.g., nuclear facility) development. Schedules and baselines shall have appropriate accompanying documentation. These baselines shall include the project technical requirements; schedule to implement project work scope; cost to implement project work scope on the project schedule; and an assessment of the risks to achieving the baseline. In addition, the baseline shall include a summary of the project cost baseline maintained at the asset level (e.g., Initial Handling Facility), and a projection of the cost baseline for the total life-cycle cost and cost to Initial Operating Capability (IOC) and Full Operating Capability (FOC). The baseline and schedule shall be managed on a real-time basis. The baseline change process must remain sufficiently rigorous and disciplined to ensure that the baseline is accurate, up-to-date, and provides meaningful data and information to support aggressive cost and schedule management by the M&O and OCRWM. The M&O shall use the baseline as the basis for the funding profile (not to exceed the funding limitations in the Contract Section B) required for completing the Contract SOW. All baseline and schedule changes shall be in accordance with approved OCRWM change control processes.
- 3.6.3 The Management Schedule and subordinate lower schedules (e.g., level 2, etc) shall contain the following elements:
- A). The functional logic showing the relationships among activities. The requirements shall also depict the relationships by schedule activity and interdependencies among the top level activities.
 - B). A summary of the top level requirements with reference to supporting requirements documents and specifications.
 - C). A list of key assumptions that includes assumptions made by the M&O, especially those that indicate performance or milestones to be accomplished by OCRWM and its other contractors.
 - D). Key activities and decision points that correspond with OCRWM key milestones (e.g., Level 1).
 - E). Detailed construction schedules as provided by the OCRWM Construction Contractors.
 - F). Schedule inputs by other OCRWM direct contractors.
- 3.6.4 The Integrated Baseline and subordinate baseline (e.g., Level 2, etc.) cost information shall provide for budget forecasting and cost tracking at the asset level and below. Cost estimation shall be proportionate with design detail. Control account cost estimates shall be rigorous and well documented including risks and level of cost specificity.

3.7 Project Management Execution

- 3.7.1 The M&O shall comply with project management requirements identified in DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets, dated 07/28/2006, and any subsequent revisions thereto, and its implementing guide DOE Manual 413.3-1, Project Management for the Acquisition of Capital Assets, dated 03/28/2003, and any subsequent revisions thereto. In accordance with DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets, dated 07/28/2006, and any subsequent revisions thereto, the project management approach of OCRWM is to identify and manage the repository work activities under a Repository Federal Project Director (FPD) supported by an Integrated Project Team (IPT). The Repository FPD's primary responsibility is to monitor and ensure the M&O performs within authorized cost, schedule, and scope as identified under the contract. Additional FPDs and IPTs will be identified for repository subordinate projects (e.g., Initial Handling Facility). The M&O shall participate on IPT(s) as requested.
- 3.7.2 The M&O shall manage cost and schedule against the approved baseline. The M&O shall:
- A). Implement a certified Earned Value Management System.
 - B). Submit a monthly cost and schedule report for performance against the Integrated Baseline and Level 1 Schedule; performance against the annual funds allocation (annual work plan); performance against subordinate project (Level 2 and lower) baseline; and performance against each project (e.g., Initial Handling Facility). Schedule and baseline reports shall include input by other organizations (e.g., Lead Laboratory, OCRWM Construction Contractors) where appropriate; and risk evaluation and proposed mitigation.
 - C). Submit an annual evaluation of the Level 1 Summary Schedule and Integrated Baseline and include recommendations for schedule and baseline changes.
- 3.7.3 Where subcontracting is required for project execution, the M&O shall develop and submit to the FPD and the Contracting Officer contract acquisition plans. The M&O shall provide a subcontract cost estimate (budget) including description of cost estimate precision and risk factors; provide an analysis of market conditions including local market considerations and anticipated industry interest in the procurement; provide a recommendation of contract type, incentive (if any), and a discussion on the advantages and disadvantages of this recommendation including there contractual options considered but not recommended; and provide a discussion on small and disadvantaged business participation, and Nevada-based business participation.

3.8 Management and Update of CD Documentation

The M&O shall prepare critical decision documentation as required under DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets, dated 07/28/2006, and any subsequent revisions thereto. This shall include preparation of:

- 3.8.1 CD-2 and associated documentation.
- 3.8.2 CD-3 and associated documentation.
- 3.8.3 Support development of CD-4 and associated documentation.

3.9 Configuration Management

The M&O shall adopt and maintain a formal configuration management system using the OCRWM configuration management model and PEP. This configuration management system shall implement the integrated OCRWM business workflow processes as defined by the OCRWM configuration management model and shall address the M&O's management model, project management and control system including change management and control, engineering design, license management, requirements management, document control, records management, data management, property management, and information technology. As part of change management and control, the M&O shall establish provisions to ensure compliance with elements and commitments established in the LA, and any subsequent commitments to the NRC. These elements shall be seamlessly integrated into a process supported by appropriate information technology hardware and software as defined by OCRWM's configuration management model in the final implementation. The initial implementation may be the M&O's choice of an enterprise configuration management system, if so directed by OCRWM. The integrated configuration management system shall address, as a minimum, the following:

- 3.9.1 The M&O's management model and processes.
- 3.9.2 The M&O's project management and control system.
- 3.9.3 The Engineering Design Management System. Engineering configuration control shall be maintained throughout the design process through construction and shall support facility turnover to operations. The engineering design process shall be under change control. The design process shall incorporate testing, inspection, maintenance, and operation records as appropriate. The design process shall also provide for the incorporation, tracking, and disposition of licensing requirements and OCRWM commitments.
- 3.9.4 The License Application Management. As part of controlling and managing configuration, the M&O shall ensure consistency of all elements of this SOW with provisions of the License Application. Additionally, the M&O shall ensure configuration consistency with any commitments made by OCRWM to the NRC.
- 3.9.5 The Requirements Management System. The requirements management system shall continuously address technical, programmatic, and operational requirements and shall: utilize a graded approach to determine the applicable sets of requirements; implement appropriate NRC, DOE, and OCRWM requirements and industry standards to eliminate redundant requirements; utilize requirements management coordinated with risk

management. Requirements management shall be automated using commercial off-the-shelf (COTS) software and Dynamic Object Oriented Requirements System® (DOORS®) software and coordinated with other elements of this section.

- 3.9.6 The Document Control System. This system shall adopt and implement the OCRWM Document Hierarchy Policy, interface with the OCRWM configuration management model and support the LSN. The documentation control system shall address, at a minimum: a controlled document hierarchy (e.g., policies through work orders, etc); processes to preclude performance of work against outdated or uncontrolled documents; and processes to streamline document control actions (e.g., automation, etc).
- 3.9.7 The Records Management System. This M&O shall implement the records management system for records control, management and archival using the OCRWM configuration management model. This system shall be compliant with applicable federal, DOE, NRC and OCRWM record management and retention policies. This records management system shall: provide for the management (i.e., maintenance, storage, protection, and disposition) of active and inactive classified and unclassified M&O records; provide for the transition of relevant records to the LSN; provide for records retrieval from on-site and off-site storage facilities and in support of ongoing discovery efforts for litigation, including the LSN; ensure that all government records, regardless of media, in the M&O's custody are properly inventoried, indexed, moved to OCRWM-approved storage facilities, and possess a disposition schedule. The M&O shall provide a complete records inventory list in an electronic format to the OCRWM Contracting Officer on a yearly basis.
- 3.9.8 The Data Management System. The M&O shall support a data management and control process defined by the OCRWM configuration management model. The M&O shall adopt the integrated engineering data control system that supports the data management requirements and interfaces with Lead Laboratory and OCRWM data management requirements.
- 3.9.9 The Property Management System. The M&O shall establish a property management and control system which shall include processes for acquisitions, management and disposition of property, both real and personal. In addition, the M&O property management system shall: manage and account for all Nuclear Waste Fund-procured property, including day use items, allowing reconciliation of the M&O's detailed property records; establish and maintain a master equipment list; support integrated planning and strategy for property management to include acquisition support, maintenance, operation, management, and disposition of Government-owned real property and M&O-leased facilities and infrastructure; and support administration and management of M&O-leased facilities and infrastructure. The M&O shall maximize space occupancy within leased facilities and minimize the amount of disruption from workforce relocations within leased space. Additionally, the M&O shall provide for the effective management of the government owned vehicle fleet including managing both light and heavy-duty vehicle fleet. The M&O shall develop multi-year fleet

management strategies including options for alternate-fuel fleet utilization. Finally, the M&O shall support OCRWM in management of a master consolidated OCRWM property list that includes tracking of property information supplied by the OCRWM Construction Contractors and any other OCRWM direct contractors.

- 3.9.10 The Information Management System. This M&O shall establish and manage an information management and control system compatible with OCRWM configuration management model and information system requirements. Specifically, the M&O shall acquire, deploy, and maintain the integrated set of automated tools and applications needed to support the LA, design, site operations, and construction management and integration phases, including Site-wide license for OCRWM. The M&O will maintain tools and applications necessary to support all SOW requirements. These tools and applications shall: be acquired and implemented without additional cost for OCRWM's use; provided for OCRWM's use with universal read/write/modify privilege; and provided (e.g., licensed) for OCRWM's continued use after contract termination. The M&O shall utilize commercially available automation tools to the maximum extent possible. Where requirements necessitate software customization, OCRWM approval will be required prior to any M&O customization. Where customization is required, OCRWM shall be provided all source codes and lifetime unlimited use licenses, as deemed necessary by OCRWM. The M&O will minimize the use of M&O or parent organization proprietary systems and only with OCRWM authorization. Proprietary software and systems will be provided to OCRWM with no licensing or usage costs. The M&O shall maintain the existing integrated technical databases, application software, and design documentation which hosts the following information: field testing data; laboratory analytical test results; engineering data including analyses; calculations; engineering drawings; 3D model; as-built information, and waste inventory information. The M&O will maintain connectivity with the LSN and provide information and record updates of information consistent with OCRWM guidance. The M&O shall manage the Site communications systems including radio, cellular, microwave, and other high speed communication system elements up to point of interface with service providers. The M&O shall: standardize communication systems used by the M&O, OCRWM, and OCRWM direct contractors; and coordinate communication systems with and assure compatibility with NTS and Nye County government services (e.g., emergency services).

3.10 Business and Mission Support Activities

3.10.1 Summary

In addition to the processes and requirements already discussed, the M&O shall establish and provide all necessary systems, functions, and activities necessary to accomplish this SOW. This shall include provision of all personnel, facilities, equipment, material, supplies, and services, except as may be expressly set forth in this contract or as furnished by the government, and assuring that such are available to satisfy the terms of this contract. The M&O shall manage and administer business operations that support execution of this work scope.

3.10.2 Procurement and Subcontracting

The M&O shall establish an effective procurement and subcontracting program that meets all applicable DOE Acquisition and FARs. The M&O may procure and/or subcontract work for performance of any part of this Contract. The purchasing system shall be submitted to OCRWM for approval. Subcontracting should be utilized when it provides advantage to OCRWM for efficiency or cost optimization and requires OCRWM authorization at thresholds determined by the Contracting Officer. Additionally, the M&O shall submit a Purchasing System for OCRWM approval.

3.10.3 Financial Management

The M&O shall maintain a financial management system. This system shall be responsive to the obligations of sound financial stewardship and public accountability. The financial management system shall include: an integrated accounting system suitable to collect, record, and report all financial activities; a budgeting system which includes the formulation and executions of all resource requirements needed to accomplish projected missions and formulate short- and long-range budgets; an internal control system for all financial and other business management processes; and a disbursement system for both employee payroll and supplier payments. The tracking of costs shall be on a U.S. Federal government fiscal year basis.

3.10.4 Human Resources

The M&O shall maintain a strategic human-capital management system to attract and retain its workforce and promote workforce diversity. This system shall promote workforce excellence by attracting, training, and retaining a highly qualified and motivated workforce, ensuring maintenance of critical skills for repository design and licensing, and limiting the number and duration of critical skill vacancies. The M&O shall ensure that trained and qualified personnel perform work under this Contact. In addition, the M&O shall:

- A). Continually “right-size” its own workforce and that of its subcontractors to have the size and skill mix of workforce commensurate with the authorized work scope. The M&O shall maximize, to the extent practical, workforce use of virtual office and networking. The M&O shall emphasize the use of telecommuting for the workforce during the design and license defense phase. Only essential staff need be stationed in proximity to OCRWM offices. Remaining staff shall be stationed in locations driven by need and annual work plan requirements. The M&O shall provide to OCRWM a plan as part of transition which defines contract workforce levels and proposed locations. The M&O shall minimize the use of staff temporarily reassigned to Las Vegas, Nevada, from parent corporation offices. Such use is subject to Section H, Special Contract Provisions.
- B). Provide labor relations support services for all matters relating to bargaining-unit employees and collective bargaining agreements, including such activities as hiring and terminations; work rules development and administration; dispute

resolution; wage and fringe benefits; and labor agreement negotiations and compliance.

- C). Secure staff necessary to successfully accomplish the SOW. This shall include:
- a. Key personnel to provide for the effective management of M&O work scope. Such management staff shall include those positions identified in Section J, Appendix D, of the Contract. The M&O shall present for OCRWM's approval all key personnel staff positions.
 - b. Critical staff functions necessary to support the successful defense of the LA. The critical staff functions are identified in Section J, Appendix F, of the Contract. The M&O shall present for OCRWM's concurrence all staff identified to fulfill critical staff functions. OCRWM or the M&O may identify additional positions subject to this section. These critical staff functions will provide subject matter expertise in the following subject areas:
 - Canister Transfer Machine Engineering.
 - Waste Package Transfer Trolley Engineering.
 - Transport and Emplacement Vehicle Engineering.
 - Cask Transfer Trolley Engineering.
 - Criticality and Nuclear Engineering.
 - Subsurface Thermal Management Engineering.
 - Preclosure Safety Analysis Specialist.
 - Waste Package and Drip Shields Engineering.
 - Waste Package Closure System Engineering.
 - NOG-1 Cranes Engineering.
 - Subsurface Design Engineering.
 - Structural Seismic Design Engineering.
 - Transport, Aging, and Disposal (TAD) Canister interface with repository systems.

3.10.5 Quality Assurance

The M&O shall adopt and implement a Quality Assurance (QA) program that incorporates quality into all SOW activities. The quality program requirements are described in the Quality Assurance Requirements and Description (QARD), (DOE/RW-0333P), which establishes quality requirements for both the nuclear elements and balance of plant elements of the SOW. The nuclear elements include systems, structures, and components important to safety, design, preclosure safety analysis, and natural barriers important to waste isolation and related activities as defined in 10 CFR Part 63, "Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain," and meets the requirements of 10 CFR 63.142, "Quality Assurance Criteria," that must be implemented for the receipt and disposal of HLW and SNF in the geologic repository at YM. The balance of plant elements include those activities and items that are not specifically identified as within the scope of 10 CFR Part 63 and items are subject to DOE Order 414.1C, "Quality Assurance".

In the event of conflict between the DOE Order 414.1C and any QA regulation, 10 CFR 63, subpart G, for quality assurance prevails. In addition, the M&O shall:

- A). Adopt procedures that implement the requirements in the active version of the QARD and Augmented Quality Assurance Program (AQAP), as appropriate. The M&O shall implement procedures having an AP designation. OCRWM determined that for those procedures a single process integrates and enhances implementation of a common project-wide requirement.
- B). Afford OCRWM access to the M&O and M&O suppliers' facilities at each tier of procurement for the purpose of inspection, audit, surveillance, verification, review, or oversight activities by OCRWM or OCRWM authorized designees. Observers from the NRC, affected units of government, and designated tribes may participate in those oversight activities.
- C). Ensure input of all identified deficiencies into the OCRWM Corrective Action Program and respond in accordance with OCRWM requirements, AP-16.1, "Corrective Action".
- D). Submit reports of nonconformance that are dispositioned "use-as-is" or "repair" to OCRWM for approval in accordance with OCRWM requirements, LP-4.1Q-OCRWM, "Procurement Actions".

3.10.6 Safeguards and Security

The M&O shall establish and implement a safeguards and security program which implements an integrated safeguard and security management system which complies with all NRC and OCRWM requirements, as applicable. This system will be integrated with Environmental Management Systems and Integrated Safety Management Systems. Also, the M&O shall include a physical security program, and programs to protect information from unauthorized access, and programs to protect against hostile acts. In addition, the M&O shall prepare and submit applications for security clearances, as required, for work under this contract. Also, the M&O shall provide input to the design on security operations, physical barriers, access control, detection, alarm and surveillance, communications contingency responses, and material control and accountability. As directed by OCRWM, the M&O shall provide limited Site physical security capability during repository construction mobilization through construction until the OCRWM Protective Force Contractor (future contract that shall provide safeguards and security for operation of the repository) is deployed. To assist in OCRWM development of protective force capability, the M&O shall develop and submit to OCRWM a strategy for physical protection security and law enforcement for post-CA activities.

3.10.7 Performance Assurance

The M&O shall implement an integrated performance assurance function to promote a culture of continuous improvement. This shall include incorporation, where warranted, of Institute for Nuclear Power Operations nuclear safety culture initiatives. As part of performance assurance, the M&O shall: identify a comprehensive description of the

key activities, risks and accountabilities; implement a rigorous self-assessment and management-assessment program focused on quality improvement and excellence; implement a lessons-learned program which leverages local and national lessons learned and continuous feedback into design, work planning, and execution; implement a performance metric and trending program; and implement an integrated causal analysis including root- and apparent-causal analyses. The M&O shall utilize benchmarking with industry for process improvement and shall establish overall metrics for validating performance-assurance program performance.

3.10.8 Corrective Action Program

The M&O shall implement and support corrective action program which implements the OCRWM Corrective Action Program (CAP). This program shall be incorporated into a culture of continuous improvement. The M&O shall embrace the CAP as a key component of its management processes. The M&O shall: enter issues including deficiencies, nonconformances, and items identified from both internal and external sources into the corrective action program; track issues from initiation to resolution; resolve issues in a transparent and traceable manner; participate in the Management Review Committee and the Condition Screening Team; manage, support, and improve CAP software; and trend CAP data including information from lessons learned, self assessments, management assessments, NRC inspections, and other external sources.

3.10.9 Environment, Safety, and Health

The M&O shall establish an effective Environment, Safety, and Health (ES&H) program, in accordance with laws and regulations including 10 CFR 851, for all its activities and support operations of the Site. Protection of workers, the public, and the environment are fundamental responsibilities of the M&O and a critically important performance expectation. The M&O's ES&H program shall be operated as an integral, but visible, part of how the organization conducts business. The M&O shall monitor its work performance to ensure compliance with implementing documents. In addition to being a remote desert location, the Site, including the ESF tunnel complex, has specific known hazards such as silica and radon gas within the volcanic tuff. In addition, previous non-OCRWM-related activities at the NTS may present such hazards as unexploded ordinance, beryllium surface contamination, and known radiological contamination areas.

In achieving implementation of an effective ES&H program, the M&O shall perform the following:

- A). The M&O shall integrate safety and environmental awareness into all of its activities including those of subcontractors at all levels. Work shall be accomplished in a manner that achieves quality work product, protects the environment, the safety and health of workers and the public, and complies with requirements. The M&O shall identify hazards, manage risks, identify and implement good management practices, and make continued improvements in

environment, safety and health performance. The M&O shall develop a tailored set of ES&H requirements applicable to the SOW. The M&O shall develop and submit for OCRWM review any equivalency, waiver, or exemption requests.

- B). The M&O is responsible for establishing a safety basis which ensures safe and healthful working conditions for its employees and all other persons under the M&O's control who work at the Site, including subcontractors. The M&O shall conduct sampling and monitoring to verify compliance with requirements. The M&O shall immediately stop work on any activity upon discovery or observation of any condition that is immediately dangerous to life or health, is a near-miss condition, is a substantive breakdown of environment, safety and health control programs, is a permit violation, or any condition that threatens to endanger workers or the public.
- C). The M&O shall provide OCRWM with recommendations on ES&H program interface control points (e.g., work authorizations) for interactions with other OCRWM contractors for work at the Site. OCRWM Construction Contractors will be responsible for providing safe and healthful working conditions within an OCRWM designated work isolation zone.
- D). The M&O is responsible for identification, establishment and execution including, but not limited to, the following specific worker health and safety program requirements:
 - a. Occupational safety.
 - b. Construction safety.
 - c. Underground safety.
 - d. Radiological safety including exposures to radon.
 - e. Emergency Management.
 - f. Radiological safety related to as low as is reasonably achievable (ALARA).
 - g. Industrial hygiene.
 - h. Fire Protection Engineering.
 - i. Occupational Medical including emergency medical.
 - j. Fire emergency response including fire fighting and rescue response.
- E). The M&O is responsible for identification, establishment, and execution including, but not limited to, the following specific environmental program requirements:
 - a. Land access including authorizations, rights-of-ways, and other approvals.
 - b. Endangered species and biological monitoring and control.
 - c. Cultural resources.
 - d. Permit compliance.
 - e. Solid and hazardous waste management.
 - f. Reclamation and resource management.
 - g. Water and wastewater compliance.
 - h. Spill and release prevention, response, and mitigation.
 - i. Air monitoring.

- F). The M&O shall develop and implement a fully-integrated transportation/traffic management program that meets all applicable requirements. This program shall apply to shipments both on-site and off-site. In addition to compliance with actions specified under regulatory requirements, this program shall include, but is not limited to: using an automated transportation management system to perform transportation tasks and reporting shipment data; procuring the lowest available commercial shipping rates and use of approved common carriers; developing and implementing appropriate training and qualification requirements and maintain records of program activities.
- G). As directed by OCRWM, the M&O shall maintain a National Environmental Policy Act environmental baseline from the Repository Environmental Impact Statement and Supplemental Environmental Impact Statement.
- H). The M&O shall develop and execute a repository permitting strategy in support of OCRWM. The M&O is accountable for supporting OCRWM, as the permit applicant, in obtaining and maintaining all necessary permits, authorizations, and approvals necessary to implement the SOW.
- I). The M&O shall prepare a strategy for emergency services supporting pre-CA and post-CA repository mobilization and construction activities.

3.10.10 Compliance Reporting

The M&O shall develop and maintain a fully-integrated compliance issue reporting system ensuring timely reporting of any condition. The M&O shall ensure reporting of any reportable condition including, but not be limited to, applicable ES&H regulations; applicable DOE Orders; and QA requirements; Price-Anderson Amendments Act reporting; and NRC reporting required under 10 CFR 21. The M&O shall consolidate for OCRWM use reporting information from other organizations (e.g., OCRWM construction contractors).

3.10.11 Employee Concerns Program

The M&O shall establish and maintain an Employee Concerns Program consistent with DOE standards and NRC expectations. The M&O shall submit the implementation plan, procedures, and guidance documents to the DOE OCRWM Concerns Program for review and approval prior to implementation. The M&O and its subcontractors shall cooperate with OCRWM investigations and requests for additional information from OCRWM to facilitate in the resolution of concerns or allegations.

3.10.12 Differing Professional Opinion

The M&O shall establish and maintain a Differing Professional Opinion process (for technical issues) consistent with DOE and NRC standards.

3.10.13 Safety Conscious Work Environment

The M&O shall establish and maintain a Safety Conscious Work Environment (SCWE) consistent with DOE OCRWM and NRC expectations. The M&O shall ensure that all employees are afforded a workplace free from harassment, intimidation, retaliation, and discrimination. The M&O shall take prompt action to adequately and effectively mitigate issues that may prevent the M&O and subcontractor employees from raising concerns to the M&O, OCRWM, or the NRC.

3.10.14 Business-Related Legal

The M&O shall maintain a legal program to support contract activities such as those related to patents, licenses, and other intellectual property rights; subcontracts; technology transfer; cooperative research and development agreements; environmental compliance and protection; labor relations; and litigation and claims.

3.10.15 Public Information, Community Coordination and Support

The M&O will provide timely and accurate information to government officials, the media, employees, stakeholders, and members of the public. The M&O shall: provide for the design, maintenance and support for the OCRWM external web site; provide public policy and legislative analyses of OCRWM-related issues; support the conduct of public hearings and meetings; develop public information programs and products; support interactions with government entities, regulatory bodies and interested parties; support effective internal communications; provide for tours of the Site including the ESF complex; operate the information center in Pahrump; support the Freedom of Information Act reading room; and participate in community outreach programs. In addition, the M&O shall support OCRWM in the interactions with Timbisha Shoshone Tribe, other Native American tribes and organizations, Nye County, and AULGs. In addition, the M&O shall:

- A). Support OCRWM in coordinating with Nye County to establish a community outreach function in OCRWM's Pahrump office within six months of contract award.
- B). Provide economic development recommendations to OCRWM.
- C). Supporting OCRWM in interactions with members of Nye County and the AULG.
- D). Supporting OCRWM in government-to-government interactions with Native American tribes with cultural or historic ties to YM.
- E). Performing periodic needs assessments to determine what support to the community is necessary to facilitate OCRWM activities and operations.
- F). Conduct an engineering, science, and math education program with a primary focus on Nye County. The program may include, with the Contracting Officer's approval, technical support; loans of scientific equipment; programs of "hands-on" science and engineering experience for students, teachers, and faculty

members; a program of encouraging volunteerism and community service; and cooperative programs.

- G). Maintain an “800” telephone number in support of OCRWM Program information. Also, conduct a Speakers Bureau Program, and an Exhibits Program.
- H). Support OCRWM in conducting Public Meetings.

3.10.16 Other Administrative Services

The M&O shall provide and maintain all other necessary administrative and mission support activities and services, not otherwise listed.

4.0 LICENSE DEFENSE AND LA UPDATE

4.1 Summary

The M&O shall support OCRWM in the defense of the LA, develop responses to NRC requests, and prepare the update or amendments of the LA.

4.2 Background

OCRWM, as the applicant for a license, has overall responsibility for obtaining a license for a repository at YM. As the future licensee, OCRWM is responsible for all programmatic interactions and interfaces with the NRC. When OCRWM submits the LA, its primary licensing responsibilities will shift from LA development to the support and defense of the LA during the NRC review and adjudicatory process. The NRC regulations in 10 CFR 63 provide the bases for the fundamental NRC licensing safety conclusions being made at the time of the CA. The principal NRC decision affecting the subsequent authorization for OCRWM to receive and possess waste is focused on the NRC determination that the repository construction is substantially complete and is in conformance with CA. Unlike prior power reactor licensing procedures, where the final licensing safety decision is made after construction and relies upon extensive development of safety-related design bases information during construction, the repository licensing proceeding will not. Licensing conducted under 10 CFR 63 places a substantial burden on OCRWM and its major contractors to submit an LA and support the NRC review process with sufficient information necessary to support the NRC review process and allow NRC staff to make affirmative CA findings.

4.3 License Defense

The M&O shall support the license defense activities including necessary support functions to include the following:

- 4.3.1 Support rapid processes for planning, document preparation, and multi-organizational reviews and approvals in response to NRC questions on the LA. This shall include response to the needs of Office of General Counsel personnel and outside counsel and

will include, but is not limited to, the following:

- A). Preparing responses to NRC correspondence, where warranted.
- B). Preparing and integrating responses to NRC Requests for Additional Information (RAI).
- C). Identifying, preparing and securing the availability of witnesses.
- D). Preparation of testimony, creation of admissions and interrogatories, and responses on behalf of OCRWM.
- E). Preparation of briefing material. Support for depositions of opponents including analysis of depositions, review and comment on expert witness prepared reports, analysis, and testimony.

4.4 LA Update and Amendment

During the licensing process, updates and potential amendments to the LA will be required. These will include updating the application to provide additional information that becomes available, responding to requests for information, addressing contentions, and preparation to support OCRWM in administrative hearings.

The M&O shall provide the key integration and support necessary for all LA update and amendment activities. This shall include, but is not limited to, the following:

- 4.4.1 The M&O shall prepare revisions to the Safety Analysis Report (SAR) including integration of SAR information requirements with OCRWM, OCRWM direct contractors, and Lead Laboratory input.
- 4.4.2 The M&O shall prepare and integrate responses to NRC RAIs as appropriate.
- 4.4.3 The M&O shall be responsible for the preparation of a LA update(s) and (if necessary) amendment(s) that satisfy all regulatory requirements with input from OCRWM and the Lead Laboratory for assigned sections. The M&O will identify to OCRWM those inputs to the LA update or amendment which the M&O considers not to satisfy regulatory requirements or licensing strategic needs.
- 4.4.4 The M&O shall prepare and utilize a management plan for the development, review, and approval of the LA update or amendment.
- 4.4.5 The M&O shall identify and monitor a set of past and current licensing proceedings for applicable licensing precedent.
- 4.4.6 The M&O shall support OCRWM in defining the necessary information for any subsequent LA updates or amendments.
- 4.4.7 The M&O shall provide the development, technical editing, graphics, and production control functions for the preparation of the LA update or amendment.
- 4.4.8 The M&O will be responsible for the production of hard copy and electronic file

versions of the LA.

4.4.9 The M&O shall support OCRWM in regulatory filing and distribution requirements.

4.4.10 The M&O shall provide for configuration management of the LA.

4.5 License Application Plans and Committed Information

The M&O shall prepare Plans and information identified within the SAR that OCRWM committed to provide to NRC at a later time. This includes, but is not limited to, the following Plans and information:

4.5.1 The Physical Protection Plan

The Physical Protection Plan shall be prepared compliant with 10 CFR 73 and shall be submitted to OCRWM within 90 days after NRC CA.

4.5.2 The Material Control and Accounting Plan

The Material Control and Accounting Plan shall be prepared compliant with 10 CFR 74 and shall be submitted to OCRWM within 90 days after NRC CA.

4.5.3 License Specifications

These include license specifications and license conditions which shall be included in the updated application for the License to Receive and Possess.

4.5.4 The Emergency Preparedness Plan

The Emergency Preparedness Plan shall be prepared compliant with 10 CFR 72.32(b) and shall be submitted to OCRWM a minimum of 12 months prior to submittal of updated application for a License to Receive and Possess.

4.5.5 Operational Radiation Protection Program

The Operational Radiation Protection Program shall be compliant with 10 CFR 20 and shall be submitted to OCRWM a minimum of 3 months prior to the License to Receive and Possess.

4.5.6 Start-up and Testing Program

The warm Start-up and Testing Program for the repository will be developed by the OCRWM Repository Operations contractor. The M&O shall support the development of this Program through provision of any design or configuration management information. Cold start-up and isolated throughput testing shall be an M&O responsibility (SOW, Section 12).

4.6 License Application Configuration Control

The M&O shall ensure configuration control of the License Application and subordinate input documents per OCRWM direction and ownership. This shall include establishing a screening and formal review process to identify and disposition proposed changes to engineering, science, and programmatic documents that form the basis of the SAR. This shall include:

- 4.6.1 Establishing a screening process as part of review for changes in accordance with 10 CFR 63.44. This screening will determine if the proposed changes impact the SAR and, therefore, require additional evaluation and documentation.
- 4.6.2 Establishing a formal review process after initial screening to determine if the proposed change impacts a license application commitment, condition, or specification as defined in 10 CFR 63.44(b). The review shall result in a written recommendation to OCRWM on the disposition of the change.
- 4.6.3 As a result of the formal review, the M&O shall also develop a report at least every 24 months that summarizes changes, tests, and experiments, including an evaluation of each.

4.7 Miscellaneous Licensing Support

During the LA review and NRC adjudication process, the M&O shall provide miscellaneous licensing support including:

- 4.7.1 The M&O shall provide technical input for responses to open items and confirmatory items, and provide support at technical meetings with NRC staff to resolve issues related to the assigned scope of work during review. The M&O will support meetings and resolve issues related to the assigned scope of work with the Nuclear Waste Technical Review Board.
- 4.7.2 The M&O shall provide material in a timely manner that permits compliance with NRC schedules, and comply with LSN and other discovery and record-retention requirements.
- 4.7.3 The M&O shall lease, operate and provide technical support for the Licensing Support Office in Bethesda, Maryland.
- 4.7.4 The M&O shall provide technical and legal support during the adjudicatory process for hearings before the Atomic Safety and Licensing Board. This shall ensure providing the key personnel and critical staff necessary to successfully defend the LA.

5.0 REPOSITORY DESIGN

5.1 Summary

The M&O shall serve as the design authority and is responsible for development of the final design for OCRWM YMP repository assets for IOC and for FOC. The M&O shall maintain a robust design control process as the responsible design authority and facilitate the inclusion of regular oversight by federal engineers from the OCRWM Office of the Chief Engineer in the on-going design process. The M&O shall provide in-house expertise in the areas of construction, construction management, and operations during the design process to ensure constructability, operability, and maintainability of all features. The M&O shall include preclosure safety analysis within design efforts and supporting LA update. The M&O shall develop and provide to OCRWM technical specifications from repository design to support OCRWM Construction Contractors. The M&O shall be responsible for the development of select waste handling equipment. The design will conform to industrial codes and standards as defined in the LA and through OCRWM requirements. The design effort is not complete until all documentation, data, electronic information, and 3D models from the M&O are accepted by OCRWM.

5.2 Initial Operating Capability Design

5.2.1 The M&O shall prepare the detailed design for repository IOC. The detailed design is defined to be construction-ready drawings, procurement specifications, and purchase orders for the features as defined by OCRWM. The repository IOC may include some or all of the following facilities and features:

- A). Canister Receipt and Closure Facility (CRCF)-1. The CRCF-1 will be a nuclear waste and SNF processing facility that shall receive DOE disposable canisters and TAD canisters, load canisters into waste packages, and seal the waste packages. CRCF-1 shall have the capability of receiving waste via rail or truck transportation casks. This facility shall have the ability to receive and handle DOE disposable canisters and TAD canisters, to transfer them into waste packages, to close the waste packages, and to load the waste packages onto transport and emplacement vehicles for subsequent waste disposal emplacement in the subsurface facility. Additionally, this facility shall have the capabilities to transfer vertical dual-purpose canisters from transportation casks into aging overpacks and then onto site transporters for transport to an aging pad and to transfer horizontal dual-purpose canisters to the transfer trailer for transport to an aging pad where they would be pushed into the horizontal access module. The CRCF-1 shall have a limited ability for repair of damaged casks and canisters. Any repair work for canisters or waste packages that required underwater work would be performed in the Wet Handling Facility, which would have the ability to place a damaged container in the spent fuel pool and open it under water. Uncanistered spent nuclear-fuel assemblies would not be processed in the CRCF-1.

- B). Wet Handling Facility (WHF). The WHF will be a SNF processing facility that shall receive and process uncanistered commercial SNF or SNF in dual purpose canisters (DPC). The WHF shall have the capability of receiving waste via rail or truck transportation casks. The WHF shall have approximately 15-meter (50-foot)-deep spent fuel pool. The pool would have a limited capacity to hold up to 80 pressurized water reactor (PWR) SNF assemblies and 120 boiling water reactor (BWR) SNF assemblies. The SNF assemblies would be loaded into a TAD and transported to either the aging pads for thermal management or a CRCF for packaging into waste packages. The facility also would contain an area to facilitate the handling and limited repair of casks and TAD canisters. In addition, the facility would prepare the unloaded DPC for removal from the facility.
- C). Initial Handling Facility (IHF). The IHF will be an HLW and a naval SNF handling and processing facility. Both waste types would be contained in disposable canisters prior to being placed into the waste package. Naval spent fuel will be received at the IHF in rail transportation casks, and HLW would be received in either rail or truck transportation casks. This facility shall have the ability to receive and handle DOE HLW disposable canisters, to transfer them into waste packages, to close the waste packages, and to load the waste packages onto transport and emplacement vehicles for subsequent waste disposal emplacement in the subsurface facility.
- D). Aging Pad. One aging pad (identified as 17R) will be developed to provide the capability to age commercial SNF as necessary to meet waste package thermal limits. The aging pads would be at the north end of the repository surface facility operations area. The waste types accepted include vertical and horizontal DPCs and vertical TADs but no DOE HLW, no DOE SNF, or no naval canisters. The waste in aging overpacks would be received from the WHF and CRCF-1. Following thermal management, waste would be returned to one of these two facilities for further processing prior to underground disposal.
- E). Waste Package and Emplacement Pallet. The waste packages will consist of two concentric cylinders with the inner cylinder made of a modified Stainless Steel Type 316, and the outer cylinder made of corrosion-resistant, nickel-based Alloy 22. The Alloy 22 cylinder will provide long-term protection for the internal components of the waste package, including the stainless-steel inner cylinder, from corrosion and contact with water. The Type 316 stainless-steel cylinder will provide structural support for the thinner Alloy 22 cylinder. The waste package emplacement pallet shall consist of a corrosion-resistant, nickel-based Alloy 22 and modified Stainless Steel Type 316 superstructure which supports the waste package in the horizontal configuration.
- F). Low-Level Waste Facility (LLWF). The LLWF will provide for the collection, processing, and preparation for offsite shipment for the disposal of low-level radioactive waste streams generated during the handling of high-level waste. The LLWF will store wastes in boxes, drums, filters, and high-integrity containers.

Empty dual-purpose canisters would be stored in the facility for eventual disposal at an offsite low-level waste facility or offsite shipment for recycling. Liquid low-level waste from the IHF, CRCF-1 and the WHF would be transported by truck to the LLWF and transferred to an approximately 25,000-gallon liquid low-level waste tank outside and adjacent to the LLWF. In addition, an approximately 25,000-gallon processed water tank would be also located outside and adjacent to the facility. Connections would be provided from these tanks for offsite bulk shipment and treatment.

- G). Heavy Equipment Maintenance Facility (HEMF). The HEMF will provide the maintenance capability for the heavy-load handling equipment, such as the site transporter and the Transport Emplacement Vehicle (TEV) used to transport and handle SNF and HLW at the surface facilities and aging pad, or in the underground disposal area in Panel 1.
- H). Cask Receipt Security Station (CRSS). The CRSS will provide for the initial receipt and inspection of shipments of SNF and HLW arriving as railcar transportation casks, or as that carried by truck-trailer transportation casks. This facility will be the point of waste-control transfer from OCRWM National Transportation Project to the repository waste disposal project.
- I). Warehouse and Non-Nuclear Receipt Facility (WNRF). The WNRF will be a non-radiological facility that would receive empty waste packages, empty TAD canisters, aging overpacks, emplacement pallets, and drip shields from offsite manufacturers. It will have the capability for inspection, cleaning, and staging of these components for use by the CRCF-1, WHF, and IHF.
- J). Central Control Center Facility (CCCF). The CCCF will be a non-radiological facility which will provide centralized communications and plant-wide monitoring and control of nuclear waste processing. The facility will have three major areas: the Central Control Center, a central alarm station, and a central communications room. The Central Control Center will be the area from which the entire repository will be monitored, selected systems are controlled, and other systems are controlled on a supervisory level. The central alarm station will include safeguards and security measures, support the material control and accounting program, and provide protective measures for personnel and property. The central communications room will provide the capability to communicate with offsite locations, including emergency response and other DOE facilities.
- K). Emergency Diesel Generator Facility (EDGF). The EDGF will be a non-radiological facility with two emergency diesel generators that will start automatically to provide emergency power to repository waste-processing facilities during the loss of normal electric power. During a power loss, the generators will provide 13.8-kilovolt power to maintain important to safety load demands.

- L). Standby Diesel Generator Facility (SDGF). The SDGF will be a non-radiological facility with four standby diesel generators that will be started manually to provide essential power during the loss of normal electric power. During a power loss, the generators will provide 13.8-kilovolt power to maintain non-important to safety load demands in the surface and subsurface facilities. Essential loads represent systems important to human life, physical security, operations, etc.
- M). Utilities Facility (UF). The UF will be a non-radiological facility that will include a cooling tower and evaporation pond and will house the support systems, equipment, and controls, such as those necessary for the heating, ventilation, and air conditioning; central chilled water and the hot water heating subsystems; and other services to support process operations, such as chillers and heaters. Systems within this facility will be designed to prevent radiological cross-contamination of the UF.
- N). Subsurface Emplacement Area Panel 1. Waste disposal into the underground will be through the existing North ramp of the ESF complex into the Panel 1 emplacement area. Panel 1 emplacement drifts would be 5.5-meter (18-foot)-diameter tunnels spaced 81 meters (270 feet) center to center line. Panel 1 will consist of six emplacement drifts and two exhaust shafts. The shafts will be 16 feet and 26 feet in diameter and 1,200 and 1,300 feet in depth, respectively. Additionally, an approximately 16-foot performance confirmation observation drift will be developed. Emplacement drift excavation shall utilize a 5.5 meter electric-powered, tunnel boring machine (TBM). Other support, performance confirmation and connecting-drift excavation may use a combination of road headers, and conventional (i.e., drill and blast) methods. Shaft excavation may utilize such methods as raised boring. Total emplacement drift excavation is approximately 13,000 feet. Performance confirmation drift excavation length is 3,300 feet. Following excavation, waste-disposal features will be installed in the emplacement drifts including inverts, rail track, ground support, rock bolts, barrier sheeting, bulkheads and ventilation control, and monitoring and emplacement features.
- O). Performance Confirmation Program Underground Seepage Alcoves. Seepage testing requires at least one alcove located in the subsurface associated with the repository emplacement area. The construction of alcoves is required to perform seepage and unsaturated-zone testing as early as possible during the construction period. The alcoves shall require sealing to prevent evaporation from occurring during monitoring and seepage-collection activities. This sealing will allow the humidity in the alcove to remain high and prevent ventilation air from entering the alcove causing excessive evaporation of seepage water. Data collection equipment underground shall be interfaced with an underground fiber optic data network for necessary monitoring and control of data collection equipment and data transfer to portal facility.

- P). Performance Confirmation Program Underground Observation Drift and Alcove. An observation drift shall be excavated longitudinally along two emplacement drifts in Panel 1 to access rock requiring test and monitoring instrument installation. Data collection equipment underground shall be interfaced with an underground fiber optic data network for necessary monitoring and control of data collection equipment and data transfer to portal facility. Performance of tests and monitoring of the near-field environment surrounding emplacement and instrument drifts in Panel 1 requires accessibility for drilling and instrumenting borehole arrays collared from the observation drift and directed toward the emplacement drifts. Calibration maintenance and repair of instrumentation shall be performed underground, whenever possible, to eliminate the need for handling and transportation of instrumentation outside of the tunnel. Data collection equipment underground shall be interfaced, as needed, with an underground fiber optic network for necessary monitoring and control of data collection equipment and data transfer to the portal data collection facility.

5.2.2 The IOC will also contain the following support utilities and support features:

- A). Potable and Raw Water Systems. The potable and raw water systems will provide service to the North Portal and South Portal. The potable water system will support drinking water and safety fixtures use (e.g., emergency showers) and will support wash down and housekeeping activities in non-radiological facilities. Further, the potable water system will be utilized in the closed-loop hot water and chilled water systems and for decontamination, and de-ionized water will be provided for makeup water lost from the pool in the WHF. The raw water system will support dust control. Raw and potable water storage tanks will be installed at locations supporting the North and South Portal facilities. Water for these systems will originate from adjacent existing wells (e.g., J-13, C-Well complex, etc.). Additionally, a new well with raw and potable water distribution will be developed at Gate 510 to support security and access control facilities. Finally, a new well and water distribution system may be developed in Crater Flat to support northwestern side security for the land withdrawal area.
- B). Sanitary Waste Collection System. The sanitary waste collection system will include septic tanks and leach fields supporting the North and South Portal facilities and at Gate 510.
- C). Electrical Power Distribution System. The electrical power distribution system will receive and distribute power to all facilities at the North and South Portal, exhaust and intake shafts, and at Gate 510. This will include a high-voltage switchyard, a 13.8-kilovolt switchgear facility and will interface with the EDGF and SDGF. The switchyard will provide interface between offsite and onsite electrical power systems. Two 138-kilovolt transmission lines will be supplied by an OCRWM-direct contractor to the main switchyard.

- D). Fire-Water System. A fire-water system consisting of water storage tanks, piping, hydrants, valves, pumps, etc., to supply fire-suppression water will be installed to North and South Portal facilities.
- E). Storm Water Collection System. A storm water collection system, including detention ponds and a retention pond, will be installed to collect storm water from roadways, graded areas, and roof surfaces from the waste-handling facilities in the vicinity of the North Portal Pad and to route this water to an unlined retention pond near the UF.
- F). Site Roads. Site roads within the security fence will consist of paved and unpaved roads supporting vehicle transit between the nuclear facilities, aging pad, and balance of plant facilities.
- G). Site Access Roads. Site Access roads will also include development of four lanes of site access paved road. Suitable other improvements at the intersection of the site access roads intersection with U.S. 95 will also be constructed.
- H). Truck and Rail Staging Yards. Truck and rail staging yards will be developed to support waste receipt inventory management.

5.2.3 IOC Balance of Plant. The IOC Balance of Plant (BOP) facilities and features will be located adjacent to the nuclear facilities operation area and outside of the security fences and shall be designed as part of support for IOC operations:

- A). Administration Facility. This multifunctional facility will provide Site workforce services including offices, training, computer operations, cafeteria, records management, emergency operations center (if determined appropriate by the M&O), and communications.
- B). Fire, Rescue, and Medical Facility. This multifunctional facility will provide fire protection and firefighting services, underground rescue services, emergency and occupational medical services, radiological response, and decontamination. A helicopter pad will provide space for emergency medical evacuation.
- C). Administration Security Stations. These stations will provide space for security functions to control physical access from the balance of plant facilities to the nuclear operating facilities.
- D). Warehouse and Central Receiving Facility. This facility will consist of enclosed climate-controlled storage space, a receiving and shipping dock, and general management functions. These facilities would provide space for material receiving, inspection, and storage; material isolation and control; industrial hazardous materials storage; and management of materials.

- E). Vehicle Maintenance and Motor Pool Facility. This facility will have space for refueling islands to supply diesel, biodiesel, gasoline, propane, and compressed natural gas to construction vehicles and separate facilities for vehicle maintenance and washing.
- F). Diesel Fuel Oil Storage. This facility would be the beginning point of the system that would distribute fuel oil throughout the North Portal area. The fuel oil system would consist of tanks, pumps, instrumentation, and ancillary equipment. The main fuel-oil storage tank would provide fuel oil to the hot water boilers and emergency generator primary tanks, as well as standby and emergency generator reserve tanks and diesel-driven fire-water pumps.
- G). Materials Storage Yard. The yard provides open air storage of miscellaneous materials.
- H). Craft Maintenance Facility. Located adjacent to the repository nuclear facilities, this facility will provide primary craft shop services for maintenance and repair and minor fabrication supporting repository operations.
- I). Equipment and Yard Storage. The yard provides open air storage of heavy equipment as necessary for Site operations.
- J). Data Collection Facility. Surface test data shall be interfaced with a portal facility where data can be collected and recorded, including necessary monitoring and control through human-machine interfaces. Surface test data shall be transferred, when required, via telemetry to a portal data collection, monitoring, and control facility. Subsurface test data shall be transferred to the same facility through a fiber-optic data network. Portal facility space shall be required for monitoring and control equipment used to operate the Remote Operation Vehicle (ROV) used in underground emplacement drift monitoring.
- K). Calibration, Maintenance and Repair Facility. A facility is required for surface and subsurface test equipment that shall require scheduled calibration, maintenance, and repair to maintain equipment operability and data qualification. Additionally, this facility is required for the maintenance, repair, and storage of the ROV that will be used in monitoring emplacement drifts. The facility shall require radiological controls, as necessary, for personnel working with irradiated materials.
- L). Perimeter Intruder Detection and Security System. This consists of facility security fencing and intruder-detection systems that shall surround the nuclear facilities including the North Portal tunnel and all shafts.
- M). Monitoring Sites. This consists of several environmental and meteorological monitoring towers and data collection sites located around the repository. These sites are needed for compliance with various licenses, permits, and requirements.

- N). Other Site Facilities and Features. As part of pre-construction mobilization, additional other facilities and features, such as the Lower Muck Yard facilities, will be developed.

5.2.4 Subject to OCRWM direction, the M&O may be requested to develop designs or performance specifications for OCRWM contacting for the following additional features:

- A). Gate 510 Security Station. This security and access control facility will be developed at Gate 510, approximately 20 miles to the south of the repository nuclear facilities and on the south edge of repository land withdrawal area. This facility will include all personnel access control and materials onsite transit control.
- B). Visitor Center. This facility will be constructed at a location to be determined and likely to be adjacent to the Gate 510 security facility. Alternatively, this facility may be in an offsite leased facility adjacent to the Site. This facility may be a leased facility located within Nye County outside the repository land withdrawal area.
- C). Training Center. This facility will be constructed near the Site to support the Project Prototype Testing and the Operator Training and Qualification programs. The facility would not be in the land withdrawal area. This facility may be a leased facility located within Nye County outside the repository land withdrawal area.
- D). Sample Management Facility. This facility replaces an existing facility in declining condition. The Sample Management Facility houses geologic core and scientific samples and materials. The building would be about 42,000 square feet, surrounded by a 36,000-square-foot fenced area. This facility may be a leased facility located within Nye County outside the repository land withdrawal area.

5.3 Full Operating Capability Design

The M&O shall prepare the final detailed design for repository FOC. The detailed design is defined to be construction-ready drawings, procurement specifications, and purchase orders for the features as defined by OCRWM. The repository FOC will incorporate all of the facilities and features identified under IOC and may include any or all of the following additional facilities and features:

- 5.3.1 CRCF-2. The CRCF-2 will be a slide-along (identical facility to CRCF-1) for nuclear waste and SNF processing facility that will receive DOE disposable canisters and TAD canisters and will load the canisters into waste packages for underground disposal or into overpacks for surface aging. This facility site and construction is subject to lessons learned from construction of CRCF-1. The CRCF-2 augments the repository's waste receipt and throughput rate.

- 5.3.2 CRCF-3. The CRCF-3 will be a slide-along (identical facility to CRCF-1) for nuclear waste and SNF processing facility that will receive DOE disposable canisters and TAD canisters and will load the canisters into waste packages for underground disposal or into overpacks for surface aging. This facility site and construction is subject to lessons learned from construction of CRCF-1. The CRCF-3 augments the repository's waste receipt and throughput rate.
- 5.3.3 Receipt Facility. The Receipt Facility (RF) will be a nuclear waste and SNF processing facility that shall receive TAD canisters and dual purpose canisters. The RF will load the canisters into overpacks for onsite aging or into a shielded transfer cask for transfer to the CRCFs or to the WHF. Until the RF is operational, the IHF or a CRCF would provide the receipt and transfer functions of the RF. The RF augments the repository's waste receipt and throughput rate.
- 5.3.4 North Perimeter Security Station. This non-radiological facility would provide for security functions to control physical access to both the protected and non-protected areas (as defined in 10 CFR 73.2) at the northern perimeter fence in the northeastern portion of the repository surface nuclear facilities.
- 5.3.5 Aging Pad. One aging pad (identified as 17P) will provide the capability to age commercial SNF as necessary to meet waste package thermal limits. This facility shall have the ability to receive and hold TAD canisters and DPCs, but no DOE HLW, no DOE SNF, or no naval canisters. The aging pad would be at the north end of the repository surface facility operations area. For aging, canisters would be placed in concrete overpacks and positioned and secured to a reinforced concrete aging pad. The aging pad overpack waste would be received from the RF, WHF and CRCFs. Following thermal management, waste would be returned to one of these facilities for further processing prior to underground disposal.
- 5.3.6 Underground Emplacement Panel 2. Panel 2 will consist of twenty-seven 5.5-meter emplacement drifts and one intake and one exhaust shaft. Both shafts will be 26 feet in diameter and 800 feet and 1,300 feet in depth, respectively. Panel 2 periphery drifts will be excavated with a 25-foot-diameter TBM.
- 5.3.7 Underground Emplacement Panel 3. Panel 3 will consist of forty-five 5.5-meter emplacement drifts and one intake and two exhaust shafts. The shafts will be 26 feet, 16 feet, and 26 feet in diameter and 1,150 feet, 900 feet, and 1,400 feet in depth, respectively. Additionally, a new construction portal and a 25-foot-diameter access ramp will be excavated. Panel 3 periphery drifts will be excavated with a 25-foot-diameter TBM.
- 5.3.8 Underground Emplacement Panel 4. Panel 4 will consist of thirty 5.5-meter emplacement drifts and one intake and one exhaust shaft. Both shafts will be 26 feet in diameter and 1,200 feet and 1,300 feet in depth, respectively. Panel 4 periphery drifts will be excavated with a 25-foot-diameter TBM.

5.4 Design Detail and Products

- 5.4.1 Preliminary Design. Some of the preliminary design for the repository will be provided to the M&O, and the balance will be completed under this contract. The M&O will then be responsible for developing and providing the design in accordance with the features defined below. The suites of products developed in support of the LA are the design inputs to the M&O, plus any supplemental design work completed post-LA and before contract transition. OCRWM has a set of these products which are deliverables controlled by the Office of the Chief Engineer to define and control the technical baseline for the detailed design. The M&O shall not change these products or any OCRWM-defined LA-supporting design products without formal approval by OCRWM.
- 5.4.2 Detailed Design. The detailed design is defined to be construction-ready drawings, procurement specifications, and purchase orders for the defined set of IOC and FOC assets for the OCRWM repository. This will include the preclosure safety analysis (PCSA) of these design features. This does not include any repository IOC or FOC construction. The IOC and FOC assets for the repository will be constructed by the OCRWM Construction Contractors. The M&O shall also support OCRWM in the development of CD-2 documentation per DOE Order 413.3A and any additional documentation in support of other reviews conducted by OCRWM. Construction-ready drawings include, but are not limited to:
- A). Architectural: Including floor plans, doors, windows, and dimensions.
 - B). Civil: Including grading, roads, landscaping, fences, and gates.
 - C). Structural: Including finished wall details, penetrations, forms, rebar sizes, connections, and placement.
 - D). Steel: Including dimensions, type, and fabrication for purchase but not bolt holes.
 - E). Mechanical: Including process flow; heating, ventilation and air-conditioning, (HVAC); ducts; and piping, including sizing details.
 - F). Piping and instrumentation diagrams: Including instrumentation, interfaces, and piping, but not spool sketches.
 - G). Electrical: Including single lines, grounding, cable lists, equipment layout, cabinet arrangements, and terminal block wiring.
 - H). Controls: Including diagrams, flowcharts, and process flow.
 - I). Communications: Including network diagrams, routers, switches, nodes, wireless, microwave, radio frequency, and protocols.
 - J). Monitoring: Including digital control and management information system, meteorological, radiological, and fire alarm systems.
 - K). Mining: Including ground support, inverts, underground support systems and utilities, shafts, and tunnels.
- 5.4.3 The detailed design shall interface with the design of the Nevada rail line. This interface shall include utility feeds and other items such as the connection with the rail end of line yard, end of line facilities, Rail Equipment Maintenance Yard (REMY), and the Cask Maintenance Facility (CMF). The REMY and CMF are assumed to be located

within the land withdrawal area in proximity to the repository facilities.

- 5.4.4 The detailed design shall interface with TAD canister designs developed cooperatively by industry. The TAD designs will fully meet OCRWM specifications.
- 5.4.5 The detailed design shall interface with transportation cask designs.
- 5.4.6 The detailed design shall interface with design of systems provided under OCRWM direct contract. These shall include:
- A). Final design of the repository substation, power transmission lines, and etc. shall be provided by the power provider.
 - B). Final design of any other OCRWM-contracted facilities or features.
- 5.4.7 The detailed design shall include constructability input. Repository constructability shall provide input to the design on items including, but not limited to: material availability, construction mobilization and sequencing, modularization of materials within the repository, etc. Constructability input to design will seek to engineer occupational safety protection for construction workers. Constructability reviews shall include participation and input from OCRWM Construction Contractors when available for all repository facilities and features. Constructability will specifically examine:
- A). Excavation optimization including tunnel boring, road header excavation, and drill and blast techniques.
 - B). Muck removal including conveyors or mine muck cars.
 - C). Construction ventilation for optimal silica, respirable dust, and radon control.
 - D). Development of emplacement drift turnouts (e.g., geometry for TBM operation, etc.).
 - E). Optimization of emplacement drift fit-out to minimize number of passes of equipment installation.
 - F). Evaluation of installation of emplacement drift invert installation of compacted low moisture tuff ballast.
 - G). Evaluation of installation of the drip shields.
 - H). Evaluation of surface facilities and features.
 - I). Evaluation of IOC construction sequencing to optimize schedule.
 - J). Recommended spare parts, quantity and maintenance interval specified, for any equipment.
- 5.4.8 The detailed design shall consider operability of the design. Operability shall input to the design on items including design for nuclear fuel processing, including human interfaces. Operability shall also consider issues such as ergonomics, work fatigue factors, etc.
- 5.4.9 The detailed design shall consider integrated logistics support including maintainability of the design. Maintainability shall consider the ease (and other factors) with which systems or components can be modified.

- 5.4.10 The detailed design shall use the Leadership in Energy and Environmental Design (LEED) Silver Level Certification for OCRWM selected non-nuclear facilities, with the exception for using the LEED Gold Level Certification for the Administration Facility and the Fire, Rescue, and Medical Facility. Other non-nuclear facilities may be changed in LEED level at the discretion of OCRWM. The nuclear facilities are not under the LEED Certification process and are exempt from this requirement, but should consider energy efficiency, as appropriate.
- 5.4.11 Design and design-supporting documentation generated as part of this section shall be submitted as a records package to the Project Records Center.

5.5 Construction Performance Specifications and Bid Documents

The M&O shall provide construction performance specifications, design, and any requested other documents or information necessary for OCRWM to issue construction contracts. As the designer of record, the M&O shall support OCRWM in any questions or interactions from prospective bidders resulting from the performance specifications or design. Construction specifications shall be prepared for the following assets, as a minimum:

- 5.5.1 CRCF-1
- 5.5.2 WHF
- 5.5.3 IHF
- 5.5.4 Aging pad (17P and 17R)
- 5.5.5 IOC and FOC support facilities including LLWF, HEMF, CRSS, WNRF, CCCF, EDGF, SDGF, and UF.
- 5.5.6 RF
- 5.5.7 CRCF-2
- 5.5.8 CRCF-3
- 5.5.9 IOC and FOC balance of plant facilities and systems including utility systems, administrative facility, fire, rescue and medical facility, warehouse and central receiving facility, and remaining other support facilities.
- 5.5.10 Subsurface Panel 1, Panel 2, intake and exhaust shafts, and performance confirmation drift, plus any support systems and structures.
- 5.5.11 18-Foot-Diameter TBM. The M&O upon authorization from OCRWM shall conduct adequate design and develop performance specifications for an 18-foot-diameter TBM.

- 5.5.12 Second 18-Foot-Diameter TBM. The M&O upon authorization from OCRWM shall develop performance specifications for a second 18-foot-diameter TBM using YM tunneling experience with the first 18-foot-diameter TBM to optimize configuration. The second 18-foot diameter TBM will be necessary for developing Panels 2, 3, and 4.
- 5.5.13 25-Foot-Diameter TBM. The M&O upon authorization from OCRWM shall develop performance specifications for a 25-foot-diameter TBM. This TBM will be utilized for developing access and periphery drifts for Panels 2, 3, and 4. The M&O shall utilize the experience from several years of tunneling experience with the first 18-foot-diameter TBM in developing performance specifications for this 25-foot-diameter TBM.

5.6 Construction Final Design and Release for Construction

The M&O shall prepare all technical information such as drawings, bills of materials, etc., necessary for the construction of all facilities (includes IOC and FOC) designed in accordance with this SOW. OCRWM Construction Contractors will review and comment on all technical material developed for their use. The M&O shall be responsive to any changes and comments provided during this review. Following this review, OCRWM will accept, as appropriate, these drawings and materials. The M&O shall also support OCRWM in the development of CD-3 documentation per DOE Order 413.3A and any additional documentation in support of other reviews conducted by OCRWM.

5.7 Systems Engineering and Integration

The M&O shall perform system engineering and integration functions necessary to support design integration. The M&O shall perform necessary system studies to support OCRWM requirements and interface documents, including integration into design of preclosure, post-closure, waste acceptance, and onsite waste handling and transportation.

6.0 PRECLOSURE SAFETY ANALYSIS

6.1 Summary

PCSA is a systematic examination of the site, the design, the potential hazards, the initiating events, event sequences, and the potential dose consequence to workers and the public. PCSA considers the probability of potential hazards, taking into account the range of uncertainty associated with the data that support the probability calculations. Event sequences are defined, and these sequences of human-induced and natural events are used as inputs to calculate consequences of potential failures of structures, systems, and components, in terms of doses to workers and the public. These calculated doses are then compared to regulatory limits in establishing compliance with performance objectives.

The PCSA provides a safety assessment of the repository design and develops the 10 CFR 63.2 design bases. The 10 CFR 63.2 design bases and the supporting design information (including the categorization of SSCs) are subject to design control and the other QA criteria of 10 CFR 63.142.

6.2 Preclosure Safety Analysis Process

In the development of the detailed design, the M&O shall evaluate the PCSA process completed for the LA and update, as required, as it addresses the classification of SSCs as Important to Safety (ITS) or non-ITS and the development of safety functions and design criteria (the nuclear safety design bases) for the ITS SSCs. The M&O shall also identify procedural safety controls for further disposition as license specifications, operating procedures, or administrative controls. The M&O shall ensure that the licensing basis is maintained and protected as the detailed design is developed.

6.3 Event Sequence Identification

The M&O shall perform a systematic review of relevant site and facility features and processes in order to define the set of event sequences that can occur. As defined in 10 CFR 63.2, an event sequence includes one or more initiating events and associated combinations of repository system component failures that could potentially lead to exposure of individuals to radiation (including nuclear criticality). Both internal and external events shall be evaluated by the M&O using Master Logic Diagrams supported by hazard analyses, Event Sequence Diagrams, event trees, and fault trees. Event sequences are developed and their frequencies (and uncertainties) shall be estimated using historical data for similar SSCs or structural fragility calculations and impacting human reliability analysis. The frequency of occurrence is expressed in terms of the frequency of the particular event sequence occurring during the repository preclosure period.

6.4 Categorization of Event Sequences

Based on frequency of occurrence, the M&O shall evaluate and categorize event sequences as either Category 1 or Category 2 event sequences, or as Beyond Category 2 event sequences. Category 1 event sequences are “those event sequences that are expected to occur one or more times before permanent closure.” Category 2 event sequences are “other event sequences that have at least one chance in 10,000 of occurring before permanent closure.” The list of Category 1 and Category 2 event sequences forms a part of the repository licensing bases.

6.5 Dose Consequences for Credible Event Sequences

The M&O shall determine off-site (public) and on-site (public and worker) doses for normal operations and Category 1 event sequences, and offsite (public) doses are calculated for individual Category 2 event sequences. The annual dose limits for workers apply to normal operations and Category 1 event sequences, which are expected to occur during the

preclosure operating period of the repository facilities. The radiation dose to construction workers (e.g., the on-site public) during normal operations and phased construction is included as part of the normal operations and Category 1 event sequence dose. If the calculated doses are found to exceed the applicable dose limits, changes are made such that the event sequence is modified. These changes can include design changes, the use of additional or different SSCs to prevent or mitigate the event sequence, or the use of procedural safety controls. The dose calculation process is repeated and the results are reevaluated in an iterative process until the required results are obtained.

6.6 Identification of ITS SSCs

The M&O shall evaluate SSCs as ITS or non-ITS. Structures are defined as elements that provide support or confinement such as buildings, vestibules, basins, dikes, and stacks. Systems are collections of components assembled to perform a function, such as emergency power and HVAC. Components are items of equipment such as cranes, transporters, trolleys, pumps, valves, relays, interlocks, piping, conduit, or elements of a larger array, such as controllers.

6.7 Definition of Important to Safety

In classifying SSCs, the M&O shall utilize the definition in 10 CFR 63.2: "*Important to Safety*," with reference to structures, systems, and components, means those engineered features of the geologic repository operations area whose function is: (1) To provide reasonable assurance that high-level waste can be received, handled, packaged, stored, emplaced, and retrieved without exceeding the requirements of 10 CFR 63.111(b)(1) for Category 1 event sequences; or (2) To prevent or mitigate Category 2 event sequences that could result in radiological exposures exceeding the values specified at 10 CFR 63.111(b)(2) to any individual located on or beyond any point on the boundary of the site.

6.8 Classification of ITS SSCs

An SSC is classified as ITS in order to assure safety function availability over the operating lifetime of the repository. In classification of SSCs, the M&O shall define the SSC as ITS if it appears in an event sequence and at least one of the following criteria apply:

- 6.8.1 The SSC is relied upon to reduce the frequency of an event sequence from Category 1 to Category 2.
- 6.8.2 The SSC is relied upon to reduce the frequency of an event sequence from Category 2 to beyond Category 2.
- 6.8.3 The SSC is relied upon to reduce the aggregated dose of Category 1 event sequences by reducing the event sequence mean frequency.
- 6.8.4 The SSC is relied upon to perform a dose mitigation or criticality control function.

- 6.8.5 The M&O shall classify a system as ITS if it determines one or more components of a system are determined to be ITS, even though only a portion of the system may actually be relied upon to perform a nuclear safety function. This does not mean that all SSCs are classified as ITS.
- 6.8.6 The M&O shall identify and classify the SSCs supporting normal operations (and not relied upon as described previously for event sequences) that are identified as non-ITS and are subject to controls imposed by facility management systems.

6.9 Development of Nuclear Safety Design Bases

The M&O shall establish design bases for the ITS SSCs. As described in 10 CFR 63.2, design bases refer to the information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be constraints derived from generally accepted “state-of-the-art” practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. 10 CFR 63.21(a) states that the SAR must include, among other items: the design criteria used and their relationship to the preclosure and post-closure performance objectives specified at Sections 63.111(b), 63.113(b), and 63.113(c); and the design bases and their relation to the design criteria.

The safety functions and design criteria (which together are referred to as the nuclear safety design bases in the preclosure safety analysis) are developed from the applicable Category 1 and Category 2 event sequences for the SSCs that have been classified as ITS.

6.10 Design Safety Basis for ITS SSCs

In developing the design safety bases for ITS SSCs, the M&O shall evaluate the following safety performance objectives:

- 6.10.1 Mean frequency of SSC failure.
- 6.10.2 Mean frequency of the occurrence of an event sequence.
- 6.10.3 Mean frequency of seismic event-induced event sequence.
- 6.10.4 High confidence of low mean frequency of failure.
- 6.10.5 Preventive maintenance and inspection interval.
- 6.10.6 Mean unavailability over time period.

6.11 License Specification Development for ITS SSCs

The M&O shall develop license specifications for ITS SSCs. Examples of technical specifications are found in Nuclear Regulatory Commission Regulatory Guide (NUREG)-1431, *Standard Technical Specifications, Westinghouse Plants, Specifications* (NRC 1995). SSCs that have been classified as ITS are assigned licensing specifications to ensure that the ITS SSC will be available to perform its safety function when required. The license specifications shall include:

- 6.11.1 Limiting Condition for Operation Requirements.
- 6.11.2 Design Features.
- 6.11.3 Administrative Controls and Programs including a technical requirements manual.

6.12 Preclosure Safety Analysis Methodology

The M&O shall utilize and update existing information and work associated with quantitative event sequence development and quantitative reliability analyses that are to support the SAR. In completing detailed design, the M&O shall update the list of ITS SSCs. In evaluating PCSA for repository SSCs, the M&O shall examine:

6.12.1 Repository Facilities (Structures)

The M&O shall evaluate all Geologic Repository Operations Area (GROA) facilities that will under normal operations have radioactive material present and, therefore, present the possibility of event sequences leading to radioactive releases. These facilities include the Aging Facility, WHF, RF, CRCF, IHF, LLWF, and the Subsurface Panel 1. The EDGF houses equipment that provides a mitigative function in the event of an event sequence. The WNRf and BOP facilities are not expected to have any radioactive material present under normal operations.

6.12.2 Repository Systems

The M&O shall evaluate all GROA facility process and infrastructure systems. Process systems include systems that involve primary processes in the waste handling and waste isolation systems, while the infrastructure systems are those systems that are needed to provide support to the process systems and the facilities. Process and infrastructure systems exist and operate in multiple facilities. The repository facilities and process systems which are presently defined as ITS include the following:

- A). Emergency Diesel Generator Facility.
- B). Aging Facility and the Aging Handling System, including Horizontal Aging Modules (HAM).
- C). WHF Systems. These include the mechanical handling system, Waste Package

Closure System (WPCS), remediation system, and cask/canister/waste package process system.

- D). RF Systems. These include the mechanical handling system, and the cask/canister/waste package process system.
- E). CRCF Systems. These include the mechanical handling system, WPCS, the cask/canister/waste package process system, the DOE commercial waste package system, and the emplacement and retrieval system.
- F). IHF Systems. These include the mechanical handling system, WPCS, the cask/canister/waste package process system, DOE commercial waste package system, the Naval waste package system, and the emplacement and retrieval system.
- G). Subsurface Systems. These include the natural barrier system, engineered barrier system, the OCRWM and commercial waste package system, the naval waste package system, and the emplacement and retrieval system.

7.0 LONG-LEAD AND SPECIALIZED EQUIPMENT PROCUREMENTS AND PROTOTYPES

Upon authorization by OCRWM, the M&O shall contract for the design, prototype, and fabrication of key items which may be necessary during repository construction and for repository operations. The M&O shall prepare a strategy for the design and procurement of this specialized equipment. It is planned that fabrication or purchase of this equipment may be performed by the M&O, possibly using subcontractors. OCRWM may, however, opt to purchase any or all of this equipment through OCRWM direct contracts. This equipment shall include:

7.1 Waste Package Fabrication and Prototypes

The basic waste package design would be the same for the various waste forms. However, several different waste package sizes and internal configurations will be developed to accommodate the different waste forms planned for receipt at the repository.

- 7.1.1 Upon authorization by OCRWM, the M&O shall procure two prototypes of the waste package for testing and design confirmation. The types will be defined by OCRWM at a later date.
- 7.1.2 Upon authorization by OCRWM, the M&O shall procure production unit waste packages in size and general arrangement as defined by OCRWM. The M&O shall procure a quantity of waste packages necessary to support years one and two of operations. It is anticipated that 73 waste packages will be procured by the M&O to support IOC.

7.2 Waste Package Emplacement Pallet Fabrication and Prototypes

Upon authorization by OCRWM, the M&O shall procure two prototypes for testing and design confirmation. Upon authorization by OCRWM, the M&O shall procure a quantity

of production units sufficient to support IOC for years one and two of operations (approximately 73).

7.3 Waste Package Closure System

For repository operation, the M&O shall continue the existing development under the current subcontract for the WPCS and integrate this design into the surface facilities. The WPCS comprises four major areas, including a closure cell, support area, operating gallery, and maintenance area. The closure process of the waste package includes multiple operations that must all be performed remotely. The two lids must be welded onto the waste package where the inner lid is welded onto a stainless steel inner vessel and the outer lid is welded to the Alloy 22 shell. Visual inspections before welding are necessary to ensure cleanliness and positioning. Non-destructive examination of the final welds is required to verify weld integrity. In-process inspections and repairs on the outer lid are required to improve the productivity and efficiency. A stress mitigation system will be employed to reduce the risk of stress-related failures. The inner vessel will be filled with an inert gas, sealed, and leak checked to verify as inert environment. A cap will be welded over the gas port and be nondestructively examined. The integrated control system will handle all operations remotely, collect data, and store information as permanent electronic records. Weld repairs must be performed within the closure cell if the welds do not meet the inspection acceptance requirements during the complete process. Upon authorization by OCRWM, the M&O shall procure a quantity of production units to support IOC (approximately 3).

7.4 Transport and Emplacement Vehicle

For repository operation the M&O shall perform adequate design resulting in performance specifications for procurement of the TEV. The TEV will be a specialized, shielded, unmanned remote-operated rail vehicle designed to move waste packages safely from surface facilities into the subsurface facility for emplacement in Panel 1 (and subsequent panels). At a minimum, the TEV shall be designed and, upon authorization by OCRWM, a prototype procured by the M&O to meet the following requirements:

- 7.4.1 Capable of preventing uncontrolled movement that could lead to a breach of a waste package.
- 7.4.2 Capable of withstanding rock fall without breach and without jeopardizing the structural integrity of the waste package.
- 7.4.3 Capable of withstanding a high radiation environment of the emplacement drifts.
- 7.4.4 Capable of being controlled remotely in the Central Control Center.
- 7.4.5 Capable of meeting the radiation shielding requirements.
- 7.4.6 Capable of placing a WP within 10 cm +/- 1 cm of an adjacent WP in any emplacement

drift.

- 7.4.7 Upon authorization by OCRWM, the M&O shall procure the prototype TEV with extensive factory acceptance testing to prove the design, reliability, and maintenance aspects of the device.
- 7.4.8 Upon authorization by OCRWM, the M&O shall procure, inspect, test, and accept two additional TEVs based on the design from the first unit delivered to support IOC.

7.5 Site Transporter

For repository operation, the M&O shall perform adequate design resulting in performance specifications for procurement of the Site Transporter (ST). The ST would be a specialized, shielded, self-propelled unit designed to transport shielded transfer casks, transportation casks, or aging overpacks between nuclear facilities and the aging pad. The prototype ST shall be designed and, upon authorization by OCRWM, be procured by the M&O to meet the following requirements:

- 7.5.1 Capable of operation on electric motor power and self-contained generation.
- 7.5.2 Capable of operation outside in a range of temperatures and weather conditions using electric or diesel motor power.
- 7.5.3 Include a cask restraint system to prevent uncontrolled cask movement during transport.
- 7.5.4 The M&O shall be responsible for inspection and acceptance testing of equipment.

7.6 Waste Package Transfer Trolley

For repository operations the M&O shall perform adequate design resulting in performance specifications for procurement of the Waste Package Transfer Trolley (WPTT). The WPTT will be a specialized, shielded, and self-propelled unit within the CRCF or the IHF and have the ability to transition the waste package from a vertical to a horizontal orientation or vice versa. The prototype WPTT shall be designed and, upon authorization by OCRWM, be procured by the M&O to meet the following requirements:

- 7.6.1 Capable of operation on electric motor power.
- 7.6.2 Capable of rail-based transfer.
- 7.6.3 Capable of accepting an empty waste package in the horizontal position and returning a loaded waste package to the same location.
- 7.6.4 Capable of accepting the loading of a waste package in a vertical position while maintaining the waste package in a safe and secure manner.

- 7.6.5 The M&O shall be responsible for inspection and acceptance testing of equipment.
- 7.6.6 Upon authorization by OCRWM, the M&O shall be responsible for the procurement of a quantity of production units to support IOC (approximately 3).

7.7 Cask Transfer Trolley

For repository operations, the M&O shall perform adequate design resulting in performance specifications for procurement of the Cask Transfer Trolley (CTT). The CTT will be a specialized and self-propelled unit within the CRCF, WHF, RF, and IHF and have the ability to transfer the cask in a vertical orientation. The CTT in the IHF is different from the others. The prototype CTT shall be designed and, upon authorization by OCRWM, procured by the M&O to meet the following requirements:

- 7.7.1 Capable of operation on pneumatic power.
- 7.7.2 Capable of air pallet-based transfer.
- 7.7.3 Capable of accepting a loaded transportation cask in the vertical position and returning an unloaded transportation cask to the same location.
- 7.7.4 Capable of accepting the loading of a transportation cask in a vertical position while maintaining the transportation cask in a safe and secure manner.
- 7.7.5 The M&O shall be responsible for inspection and acceptance testing of equipment.
- 7.7.6 Upon authorization by OCRWM, the M&O shall be responsible for the procurement of a quantity of production units to support the GROA (approximately 5).

7.8 Canister Transfer Machine

For repository operations the M&O shall perform adequate design resulting in performance specifications for procurement of the Canister Transfer Machine (CTM). The CTM would be a specialized, shielded bell unit attached to a crane for the transfer of various canister types from transportation to waste packages or aging overpacks within the CRCF, WHF, RF, or IHF. The prototype CTM shall be designed and, upon authorization by OCRWM, procured by the M&O to meet the following requirements:

- 7.8.1 Capable of operation within the design constraints of the building and crane.
- 7.8.2 Capable of accepting all canister types.
- 7.8.3 Capable of maintaining the canister in a vertical orientation in a safe and secure manner within ± 2 degrees of vertical in the event of a drop.

- 7.8.4 The M&O shall be responsible for inspection and acceptance testing of equipment. Upon authorization by OCRWM, the M&O shall be responsible for the procurement of a quantity of production units to support IOC (approximately 3).

7.9 Spent Fuel Transfer Machine

For repository operations, the M&O shall perform adequate design resulting in performance specifications for procurement of the Spent Fuel Transfer Machine (SFTM). The SFTM will transfer SNF assemblies from a DPC or transportation cask to either a TAD canister or the SNF staging rack. The bridge of the SFTM includes a viewing platform allowing personnel to observe pool operations. The SFTM interfaces with the PWR lifting grapple and BWR lifting grapple. The SFTM operates only in the pool area of the WHF. At a minimum, the SFTM shall be designed and, upon authorization by OCRWM, procured by the M&O to meet the following requirements:

- 7.9.1 Capable of operation within the design constraints of the building and crane.
- 7.9.2 Capable of accepting all PWR and BWR types.
- 7.9.3 Capable of providing the operator with an unobstructed view of handling operations.
- 7.9.4 Capable of ensuring that a seismic event does not cause the device to overturn, derail, lose any main structural components, or drop a SNF assembly or a load that could have an adverse impact on a staging rack, transportation cask, or shielded transfer cask that contains SNF assemblies.
- 7.9.5 The M&O shall be responsible for inspection and acceptance testing of equipment.

7.10 DPC and TAD Aging Overpacks

For repository operation, the M&O shall perform adequate design resulting in performance specifications for procurement of the DPC and TAD Aging Overpacks. The DPC and TAD Aging Overpacks would be a specialized, shielded unit for storing a DPC or TAD on the aging pad in a vertical orientation. If directed by OCRWM, the M&O may be required to procure a quantity to be determined at a future date.

7.11 Horizontal Aging Modules

For repository operation the M&O shall perform adequate design resulting in performance specifications for procurement of the HAM. The HAMs would be specialized, shielded units for storing a canister on the aging pad in a horizontal orientation.

7.12 Shielded Transfer Cask

For repository operation the M&O shall perform adequate design resulting in performance specifications for procurement of the Shielded Transfer Cask. The Shielded Transfer Cask would be a specialized, shielded unit for transferring a DPC or TAD from building to building in a vertical orientation. If directed by OCRWM, the M&O may be required to provide a prototype or to procure a quantity which will be determined at a future date.

7.13 Cask Tractor and Transfer Trailer

The M&O shall perform adequate design resulting in performance specifications for procurement of final design, prototype, and fabrication of the cask tractor and the DPC transfer trailer that integrates with surface facilities and HAM. Upon authorization by OCRWM, the M&O shall be responsible for the procurement, inspection, test, and acceptance of a quantity of production units to support the GROA (approximately 2).

7.14 Transport, Aging and Disposal Canisters

The M&O shall utilize the final design for the TAD canisters. As directed by OCRWM, the M&O may procure prototypes as needed and procure a quantity of production units sufficient to support IOC for years one and two of operations. It is anticipated that this will be approximately 73 TAD canisters. The final TAD procurement queue (i.e., TAD procurement coordinated with planned waste shipping queue) will be provided by OCRWM in the future.

7.15 Other Equipment and Materials

In addition to the above, other equipment and materials will be required for repository operations as determined by design evolution. If authorized by OCRWM, the M&O shall design and procure these additional equipment and materials.

8.0 SITE MAINTENANCE AND PRE-CONSTRUCTION OPERATIONS

8.1 Summary

The M&O is responsible for operation of the Site, including the ESF up to CA, in accordance with the following requirements:

8.2 Current Site Operations Status

- 8.2.1 The Site encompasses approximately 146,000 acres of desert land. The Site is in Nye County, south central Nevada, about 100 miles northwest of Las Vegas, Nevada. The Site consists of (1) the western edge of the NTS (54,000 acres); (2) USAF Nevada Test and Training Range land (18,858 acres); and (3) public access lands managed by the

BLM (51,632 acres).

- 8.2.2 Although site-characterization activities are complete, additional testing, scientific investigation activities, and public outreach will continue at the Site. To support ongoing testing and outreach activities, the M&O shall continue to maintain, operate, and improve a number of facilities at the Site.
- 8.2.3 Facilities or activities at the Site include the ESF. The ESF tunnel is 25 feet in diameter with a length of 5 miles of main tunnel in a “U” shape configuration. Additionally, a 2.2-mile Cross Drift has been excavated from the North Ramp of the ESF. Support for operation and maintenance of the ESF tunnel is provided at the North Portal Pad, consisting of two permanent structures (the Change House and the Switch Gear Building) and numerous temporary structures (e.g., sprung tent warehouses, office trailers, maintenance shop structures [Sea Land containers]). The North Portal Pad is supported by 69 kilovolt power transmission lines, and water and waste water utilities. The South Portal Pad has limited structures and no utilities.

8.3 Site Operations Requirements

Supporting Site operations, the M&O shall operate and maintain the subsurface features and associated North and South Portal Pads and all associated SSCs (collectively referred to as the ESF), including but not limited to the following:

- 8.3.1 Operate the ESF using guidance provide by DOE Order 5480.19, Change 2, dated 10/23/2001, Conduct of Operations Requirements for DOE Facilities, and any subsequent revision thereto.
- 8.3.2 Implement site access control and accountability.
- 8.3.3 Provide routine, preventative, and reactive maintenance and repair to the ESF SSCs. Utilize maintenance control and tracking programs and processes.
- 8.3.4 Design and install, as authorized by OCRWM, any system upgrades or improvements that support safe operation of the existing ESF and Site. These may include:
- A). Complete installation of the fire detection and lighting systems within the ESF tunnel.
 - B). Complete mitigative measures for the ESF rail system, ventilation system, power system, compressed air, ground support, etc.
 - C). Complete design and install appropriate fire-water system upgrades within the ESF tunnel.
 - D). Limited safety-based improvements to surface systems and support features.
- 8.3.5 Evaluate, improve, and deploy voice, video, data, and radio communication systems necessary for construction using existing digital communications towers and equipment.

- 8.3.6 Maintain configuration control for ESF temporary as-constructed systems.
- 8.3.7 Utilize a work control and authorization system.
- 8.3.8 Manage and control real and personal property.
- 8.3.9 Maintain master equipment lists.
- 8.3.10 Provide janitorial, waste management, and disposal services.
- 8.3.11 Coordinate provision of services by the NNSA's Nevada Site Office and their respective M&O contractor, as requested. These may include:
 - A). Bus service.
 - B). Paramedic and Fire & Rescue service.
 - C). Occupational Medical service.
 - D). Radio and telephone service.
 - E). Power and utility service.
 - F). Material testing and calibration service.
 - G). Surveys.
 - H). Trash and scrap disposal services and portable toilet service.
- 8.3.12 Manage, coordinate and implement incident, occurrence, and other DOE-required reporting systems.
- 8.3.13 Develop and implement a turnover process that will support turnover of the ESF to the OCRWM Construction Contractors.
- 8.3.14 Develop and implement training programs as required by field activities (e.g., underground operations, site access, confined space, etc.).
- 8.3.15 Manage, track, and maintain the light and heavy-duty vehicle fleet.
- 8.3.16 Manage, track and maintain, and appropriately store and dispose regulated and hazardous materials.
- 8.3.17 Maintain ES&H and quality programs supporting OCRWM field activities.
- 8.3.18 Support Lead Laboratory and design field testing and data collection activities, as requested.
- 8.3.19 Support public outreach tours to the Site including the ESF tunnel and the YM crest. Support weekend (Saturday) public open house tours (anticipated at six per year).
- 8.3.20 Oversee and manage M&O Site personnel, including craft labor.

9.0 CONSTRUCTION MOBILIZATION

9.1 Summary

Following NRC issuance of CA, there will be a period of construction mobilization. During this period selected facilities and features will be developed by OCRWM and the M&O. These will include selected facilities and features, and additional temporary facilities and features, needed to enable and facilitate construction of nuclear and non-nuclear repository assets. Subject to appropriate authority, OCRWM may begin construction of selected facilities and features that are sited outside the GROA prior to NRC issuance of CA.

9.2 Overview of Construction Mobilization Activities

Construction mobilization activities include a mix of facilities and features, some of which may be developed by OCRWM and some of which may be developed by the M&O. For those construction activities authorized by OCRWM, the M&O must meet the following requirements of this section:

9.2.1 Requirements for M&O Construction

Design and construct infrastructure readiness and safety upgrade scope as authorized by OCRWM in the annual work plan. For authorized construction work scope, the M&O shall:

- A). Integrate infrastructure improvements into repository mobilization strategies.
- B). Develop infrastructure readiness strategies (planning, contractual, etc.) that deploy facilities and features in a cost-effective and timely manner while meeting site operational needs.
- C). Monitor construction progress and funding, report status to OCRWM monthly.
- D). Conduct inspections, perform acceptance activities and support the turnover of facilities and features to the end user.
- E). For subcontracted work, the following requirements also apply:
 - a. Prepare subcontract bid documents, SOW, attachments, etc.
 - b. Solicit, evaluate, award and manage the subcontract.
 - c. Oversee subcontractor work execution including conducting parallel construction testing, where warranted.
 - d. Maximize use of small business or disadvantaged business or Nevada-based business, where possible, in developing infrastructure improvements.

9.2.2 Requirements for Construction Mobilization Strategy

Prepare and present to the OCRWM FPD and Contracting Officer a construction mobilization strategy.

9.3 M&O Developed Facilities and Features

9.3.1 Lower Muck Yard

The M&O shall coordinate the design and construction for the development of construction support facilities and features at the Lower Muck Yard. Six new support buildings shall be designed and constructed with utilities installed (power, water, sewer, and communications). As currently conceptualized, these shall consist of six support buildings including an approximately 43,000 square-foot field operations center for field oversight offices, training, computer operations, and emergency operations facilities; an approximately 10,000 square-foot incident-response station for fire and medical support; an approximately 43,000 square-foot craft shop and annex for maintenance and repair operations; a fuel and vehicle-wash facility; and an approximately 35,000 square-foot warehouse and material storage yard. Additionally, a fueling facility shall have space for refueling islands to supply diesel, gasoline, including alternate fuels (e.g., propane or compressed natural gas), and a separate facility for washing vehicles. The areas surrounding each building shall be paved with asphalt to control dust during operations. The entire site shall be fenced and exterior lighting installed. In execution of this work scope, the M&O shall prepare and present to OCRWM an implementation strategy that considers contracting options for design and construction (e.g., design/build, design, bid, build, etc).

9.3.2 Roads

The M&O shall design and develop temporary roads, including paved roads, haul roads, and other unpaved roads, as required. Roads shall be developed according to applicable design and construction requirements.

9.3.3 Power

The M&O shall design and install necessary temporary power supply and connections at the repository surface facility construction area, the South Portal construction facilities, exhaust and intake shaft construction areas, the batch plant facility, the Lower Muck Yard facilities, and other miscellaneous locations as determined by OCRWM. Where practical, OCRWM may opt to install permanent power supply and connections at these sites.

9.3.4 Water

The M&O shall design and install necessary temporary water supply and connections at the repository surface facility construction area, the South Portal construction facilities, the batch plant facility, the Lower Muck Yard facilities, and other miscellaneous

locations as determined by OCRWM. Where practical, OCRWM may opt to install the permanent water supply and connections at these sites.

9.3.5 Communications

The M&O shall evaluate, improve, and deploy voice, video, data, and radio communication systems necessary for construction. These systems shall interface with underground communication systems. Where practical, OCRWM may opt to install permanent repository systems or portions thereof.

9.3.6 Concrete Batch Plant Facility

To meet onsite concrete needs necessitated by this section, the M&O shall subcontract for a temporary concrete batch plant facility of sufficient capacity to produce concrete in accordance with design specifications. This temporary concrete batch plant facility shall be located to minimize utility development (where possible) and at a site that also has sufficient space to allow the OCRWM Construction Contractors to deploy their own batch plants, as defined by OCRWM at a future date.

9.3.7 Aggregate Sources

To meet onsite aggregate material needs necessitated by this section, the M&O shall develop a source or sources of aggregate within the land withdrawal area. This source(s) shall be developed meeting design requirements for aggregate size, quantity and quality. Screening, crushing, washing or other process equipment shall be supplied. The M&O shall provide aggregate materials delivery (i.e., trucks) capability. Additionally, the M&O shall identify a source(s) of aggregate meeting quality and quantity requirements for repository surface facility and underground construction needs. The M&O shall provide a report to OCRWM which details this site location, and utility and other elements necessary for development. At OCRWM's discretion, the M&O may be directed to develop these repository aggregate pit locations.

9.3.8 Material Receipt and Laydown Yards

The M&O shall develop onsite material receipt and laydown yards sufficient for support of repository and onsite construction activities in accordance with Construction Contractor requirements.

9.3.9 Explosives Control Area

The M&O shall develop appropriate location(s) for OCRWM Construction Contractor's explosives-control area and deploy powder magazines.

9.3.10 Waste and Hazardous Material Management and Sanitary Sewer Systems

The M&O shall establish appropriate waste (sanitary, portable toilet, scrap) and hazardous material management capability supporting construction mobilization. The M&O shall design and develop sanitary sewer systems at the South Portal and evaluate, improve, or replace the system at the North Portal. The M&O shall design and develop similar systems at other locations, as required.

9.3.11 Security Fencing

The M&O shall install security fencing and perimeter controls, as necessary, at the repository construction site supporting both personal security and loss prevention.

9.4 OCRWM Developed Facilities and Features

9.4.1 Offsite Prime Power

OCRWM will acquire offsite prime power for the repository. This power will also be used for construction of the repository and is included as a construction mobilization activity.

The M&O shall provide support in accordance with Section 10 of this SOW to OCRWM as it initiates an OCRWM direct contract to develop approximately 20 miles (on-site) and approximately 140 miles (off-site) of new 138kV power transmission lines replacing existing power lines. Subject to appropriate authority, OCRWM may opt to begin the portions of this activity that occur outside of the GROA prior to CA.

9.4.2 Site Access Road

OCRWM will develop a four-lane access road for the repository in order to facilitate repository construction.

The M&O shall provide support in accordance with Section 10 of this SOW to OCRWM as it initiates an OCRWM direct contract to develop approximately 20 miles of a new four-lane road (site access road). Subject to appropriate authority, OCRWM may opt to begin the portions of this activity that occur outside of the GROA prior to CA.

9.4.3 Crest Road

OCRWM will develop a two-lane road to Yucca Crest in order to facilitate construction of the exhaust and intake shafts. This road will begin at the GROA boundary at a point near Exile Hill and continue to the exhaust and intake shaft job sites.

The M&O shall provide support in accordance with Section 10 of this SOW to OCRWM as it initiates an OCRWM direct contract to develop approximately two miles of new two-lane road connecting existing roads with the Yucca Crest road.

9.4.4 Gate 510

OCRWM will develop a facility in the vicinity of the current NTS Gate 510. Included uses for this facility are, but not necessarily limited to, access control for the land withdrawal area, badging, training, communications, emergency operations center (if determined appropriate), and limited emergency medical needs.

The M&O shall provide support in accordance with Section 10 of this SOW to OCRWM as it initiates an OCRWM direct contract to develop the Gate 510 Facility.

10.0 CONSTRUCTION MANAGEMENT SUPPORT

10.1 Summary

OCRWM intends to award separate contracts for construction of repository facilities and features. A FPD will be assigned for each contract. The M&O shall provide oversight support to OCRWM and to individual FPDs as required.

10.2 Site Construction Management

The M&O shall support OCRWM and individual FPDs in managing the construction of the repository to include configuration management of the final design and as the designer of record. M&O personnel will function as “the eyes and ears” of the FPD. M&O personnel shall be assigned to oversee and surveil construction activities and alert the FPD to any issues requiring attention. In addition, the M&O shall provide advice and recommendations to improve coordination and integration of site activities on an ongoing basis, in conjunction with its responsibilities described within Construction Support Operations (SOW, Section 11) and in communication with the Construction Contractors. The M&O shall support the preparation of the “plan of the day” for issuance by OCRWM and participate in “plan of the day” meetings. OCRWM may also direct the M&O to prepare other plans and strategies associated with the safe and harmonious conduct of the construction effort.

10.3 Performance Confirmation Program Support

OCRWM has implemented a Performance Confirmation (PC) Plan designed to test the adequacy of assumptions, data, and analyses that are used in the evaluation to permit construction of the repository and direct subsequent waste emplacement operations. The PC program evaluates the subsurface conditions and changes to those conditions during

construction and waste emplacement operations to assure parameters are within specified limits. This program includes monitoring subsurface conditions and performing tests to confirm geotechnical and design assumptions that are the basis for compliance with the preclosure performance objective for retrievability.

The M&O shall support the implementation of the PC program during repository construction. This support may include:

- 10.3.1 Installation and maintenance of the PC data collection network.
- 10.3.2 Design, procurement, and coordination with OCRWM Construction Contractors for the installation of PC test instrumentation and apparatus.
- 10.3.3 Coordination with both Lead Laboratory and OCRWM Construction Contractors in the conduct of the PC program.

10.4 Construction Oversight Plan

The M&O shall prepare and submit to OCRWM for concurrence a Construction Oversight Plan for supporting OCRWM in overseeing OCRWM Construction Contractors' work activities. This Plan shall correspond with OCRWM construction contracting approach as defined in the Integrated Baseline. This Plan shall define the recommended roles and responsibilities, schedule, and approach for OCRWM to conduct effective oversight during construction oversight. Additionally, this Plan will define the M&O's roles, responsibilities and schedule resources necessary to conduct construction management integration and construction inspections. Also, this Plan shall articulate inspection processes that will ensure the Construction Contractors are implementing the final design. The Plan shall be updated as required after initial submission. At a minimum, the Plan shall include:

- 10.4.1 Staffing and organization for construction management.
- 10.4.2 Key points of interface with OCRWM and OCRWM Construction Contractors.
- 10.4.3 Processes consistent with OCRWM to identify, resolve, or elevate issues.
- 10.4.4 A schedule including critical path actions necessary to support repository Construction (e.g., permitting) including identified actions for the M&O, OCRWM, and OCRWM Construction Contractors. This shall include construction readiness reviews with OCRWM Construction Contractors.
- 10.4.5 Resources (labor and material) necessary for construction oversight.
- 10.4.6 A one-year look ahead construction inspection schedule.
- 10.4.7 A description of the Site management processes including description of common support services to be provided by the M&O for OCRWM Construction Contractor use.

- 10.4.8 A description of the Site work authorization processes.
- 10.4.9 Description of construction testing and oversight processes.
- 10.4.10 A description of how committed materials will be used, controlled, and managed.
- 10.4.11 Descriptive linkage to the repository OCRWM PEP and any subordinate Project Management Plan(s) and the Environment, Safety, Quality, and Health Program.
- 10.4.12 Description of a comprehensive labor relations approach, both the M&O and recommended strategy for OCRWM Construction Contractors, to achieve harmonious labor relations while controlling cost and achieving quality.

10.5 Construction Inspection Services

The M&O shall furnish all facilities, labor, and materials reasonably needed for performing construction inspections and tests as required to support OCRWM. The M&O shall maintain an adequate construction inspection system and acceptance testing system, and perform such inspections and testing. Additionally, the M&O shall support OCRWM and individual FPDs in monitoring construction performance against OCRWM Construction Contract requirements to ensure that the work performed under the Contract conforms to design requirements. The M&O shall maintain complete inspection and testing records, including records produced by Construction Contractors, and make them available to OCRWM. The M&O shall develop and submit an integrated Construction and Acceptance Testing Program to OCRWM for concurrence that includes the following elements:

- 10.5.1 Checking of select vendor's shop drawings to assure conformity with the approved design drawings and specifications.
- 10.5.2 Acceptance test plans and procedures for onsite inspection of construction workmanship, compliance with design drawings and specifications, management of the design construction changes, and criteria for acceptance of fabricated and constructed items.
- 10.5.3 Evaluation of select OCRWM Construction Contractor vendor(s) material fabrication including receipt (delivery) documentation. Examination of vendor component test and acceptance documentation.
- 10.5.4 Inspection of OCRWM Construction Contractor construction activities to assure adherence to approved (released for construction) drawings and specifications.
- 10.5.5 Recommendations for OCRWM-specified construction witness or hold points.
- 10.5.6 Development of methods and processes to complete field and laboratory tests to verify construction workmanship, and materials and equipment, and approved working

drawings and specifications.

- 10.5.7 Recommendations on approaches and methods to troubleshoot and correct material acceptance and construction deficiencies.
- 10.5.8 Support in review of partial, interim, and final estimates and report of quantities and values of construction work performed, for payment or other purposes.
- 10.5.9 Recommendation on approach to transition from acceptance to turnover to OCRWM and its operation M&O.
- 10.5.10 Recommendations on improvements to construction execution that improve configuration control and documentation of constructed assets.
- 10.5.11 Personnel performing inspections shall be certified in accordance with the pertinent codes, standards, and specifications. These certifications shall be verified prior to performing inspections.

10.6 Consolidated Construction Status Report

The M&O shall integrate with OCRWM Construction Contractors and prepare a consolidated monthly Construction Status Report. This Status report shall allow for integrated cost, scope, and schedule reporting for construction progress including earned value. The Status report shall also include:

- 10.6.1 Status on delivery of materials and fabricated items.
- 10.6.2 Estimates and reports on the quantities, value, and type of construction work completed.
- 10.6.3 Status on the material acceptance including report on rework or nonconforming items received or constructed and identification of corrective actions.

10.7 Other Construction Reports

In coordination with OCRWM and OCRWM Construction Contractors, the M&O shall integrate a consolidated construction report that shall meet the provision of 10 CFR 63.72. This report shall at least address the following:

- 10.7.1 Surveys of the underground facility excavations, shafts, ramps, and boreholes referenced to readily-identifiable surface features or monuments.
- 10.7.2 A description of the materials encountered.
- 10.7.3 Geologic maps and geologic cross-sections.

- 10.7.4 Locations and amount of seepage (if observed).
- 10.7.5 Details of equipment, methods, progress, and sequence of work.
- 10.7.6 Construction problems.
- 10.7.7 Anomalous conditions encountered.
- 10.7.8 Instrument locations, readings, and analyses.
- 10.7.9 Location and description of structural support systems.
- 10.7.10 Location and description of dewatering systems (if utilized).
- 10.7.11 Details, methods of emplacement, and location of seals used.
- 10.7.12 Facility design records (e.g., design specifications and drawings).

10.8 Construction Review Participation

The M&O shall participate in construction review activities including meetings that discuss significant issues associated with the establishment, development, and progress of the construction.

10.9 Labor Relations Support

The M&O shall support the coordination of labor-management relations. This shall include coordination with OCRWM Construction Contractors in labor agreement development, including any project labor agreement(s). The M&O shall support OCRWM in developing strategies to promote harmonious labor relations among multiple contractors and their labor force during repository construction. The M&O shall support OCRWM in assuring compliance with Davis-Bacon Act requirements. The M&O shall be responsible for project labor agreements for work accomplished by the M&O, but will not be a party to project labor agreements associated with the OCRWM Construction Contractors' work scope.

The M&O labor relations support shall address expanding the diversity of the craft labor work force and increasing the utilization of minorities and women in skilled trades.

11.0 CONSTRUCTION SUPPORT OPERATIONS

11.1 Summary

The M&O shall be responsive to all OCRWM and Operations Contractor requests during construction mobilization repository construction, turnover, and start-up of the nuclear

facilities. However, the M&O shall supply and include operability review of nuclear processes and systems during repository design activities.

11.2 Support Services

- 11.2.1 The M&O shall provide physical security for all M&O-developed material laydown yards. Construction Contractors will be responsible for security of all materials in contractor-developed or controlled areas.
- 11.2.2 The M&O shall provide, or coordinate the provision of, the following common support services (as authorized by OCRWM):
- A). Construction site security.
 - B). Badging.
 - C). Bus service.
 - D). Paramedic and Fire and Rescue service.
 - E). Occupational Medical service.
 - F). Radio and telephone service.
 - G). Power and utility service.
 - H). Material testing and calibration service.
 - I). Trash and scrap disposal services.
 - J). Portable toilets service.
 - K). Track hazardous and regulated materials for all Site users. Develop for OCRWM consolidated, regulated material and hazardous material reports.
 - L). Develop and maintain a consolidated property listing for all Site property.
 - M). Manage, coordinate, and implement incident, occurrence, and other OCRWM required reporting systems.
- 11.2.3 The M&O shall provide material transportation from the material receipt and laydown yards, as required, by OCRWM Construction Contractors and manage integration of construction material transportation within the land withdrawal area. The OCRWM Construction Contractors will be involved in the material transportation during every step in order to maintain control of their materials. Loading and unloading of construction materials procured by OCRWM Construction Contractors will be performed by OCRWM Construction Contractors.
- 11.2.4 In managing the Site, the M&O is responsible for maintenance of utility systems (other than high voltage) including, but not limited to, raw water, drinking water, waste water, radio, telephone systems, etc. Additionally, the M&O is responsible for maintenance of the Site's improved (paved) and unimproved (unpaved) roads including application of dust control and dust suppression services. The M&O may be required to develop additional infrastructure components at the direction of OCRWM.
- 11.2.5 The M&O is responsible for managing and monitoring site environmental monitoring systems. Such systems may include, but are not limited to, particulate monitors, wind

speed monitors, rain gauges, etc. The M&O shall supply biologists, archeologists, reclamation specialists, and permit monitoring specialists, as required by OCRWM.

- 11.2.6 The M&O is responsible for providing field office space for M&O field construction management and site operations workforce. Field office space shall be of adequate size to accommodate collocation of OCRWM field construction and site management staff.
- 11.2.7 The M&O may be requested to provide (direct perform or subcontract) miscellaneous field activities including drilling, trenching, field sampling, etc. Such activities, if necessary, will be articulated in the annual work plan.

11.3 Fleet Maintenance Capability

The M&O shall develop or contract heavy- and light-duty fleet maintenance capability for all M&O fleet and equipment.

11.4 Construction Material Services

The M&O shall provide recommendations and strategies associated with certain construction material common support services. These include, but may not be limited to:

11.4.1 Batch Plant Facility Operation

The M&O shall prepare a strategy for coordinating concrete delivery among multiple Construction Contractors. The strategy shall compare options for supply (e.g., contractor supplied, M&O supplied, sources near the repository site, etc.) and describe advantages and disadvantages to each. Permitting requirements shall also be provided for each approach.

11.4.2 Aggregate Sources

The M&O shall identify an aggregate source or sources within the land withdrawal area. In addition, the M&O shall prepare a report recommending options for operating the aggregate source such that required access may be optimized and coordinated among multiple Construction Contractors, including identifying infrastructure needs associated with operation of identified aggregate source.

12.0 REPOSITORY OPERATIONS

Operation of the Repository is not included within the work scope of this Contract. As the Licensee, OCRWM intends to operate the repository using support from a separate OCRWM Repository Operations Contractor for support. Supporting activities for repository operations, the M&O shall perform the following:

- 12.1 The M&O shall also support OCRWM and the OCRWM Repository Operations Contractor in the development of CD-4 documentation per DOE Order 413.3A and any additional documentation in support of other reviews conducted by OCRWM.

- 12.2** The M&O shall prepare an initial set of operational procedures for all of the facilities within the scope of this contract. These procedures are based on the design and construction of the facilities and will be used for the isolated throughput testing described next. These procedures will be corrected following the isolated throughput testing and turnover to the OCRWM Repository Operations Contractor for use and refinement. These operational procedures are not expected to be complete nor exhaustive in nature and primarily deal with the technical aspects of the facilities, features, and SSCs. The OCRWM Repository Operations Contractor will expand on these for full use plus develop the associated administrative procedure to accompany them.
- 12.3** The M&O shall perform overall cold startup and isolated throughput testing of each facility after the OCRWM construction contractors have finished all individual system cold startup testing within the facility. Cold startup testing means the operational testing of all SSCs within a facility to show that the system performs as designed and built. The individual system cold startup testing will be conducted by the OCRWM construction contractor and system vendor(s) with the M&O watching the process. The overall cold startup and isolated throughput testing will be conducted by the M&O with the OCRWM Repository Construction Contractor and vendor(s) watching the process. This will provide assurance that the facilities and all of their features and SSCs are operational and built to meet the design and specifications. The isolated throughput testing will use the initial set of operational procedures developed by the M&O as defined above to demonstrate with simulated waste forms that the facilities are functional. These isolated throughput tests will be observed by the OCRWM Repository Operations Contractor who will provide input to OCRWM on the procedures and processes.

13.0 OFFSITE SUPPORT FACILITIES AND OPERATIONS

13.1 Summary

The M&O shall coordinate with Nye County, as the situs county for the repository, in development of offsite infrastructure and work locations that support repository mobilization and construction. Location of these offsite facilities will be determined through interactions by the M&O with appropriate Nye County representatives and representatives of local government.

As part of this work scope, the M&O shall assume that workforce for repository construction will be housed within Nye County to the maximum extent practicable. Workforce will be bussed from this location to the repository site. Options for this point of origin for construction workforce housing will be concurred with by OCRWM. Final location of each offsite facility or operation shall be driven by proximity to the repository site and value to the local community.

13.2 Offsite Support Facility Strategy Development

In the evaluation and determination of offsite work location(s), the M&O shall, in coordination with OCRWM, perform the following:

- 13.2.1 Identify options for location of offsite housing for staffing for construction of the repository. Type of housing (e.g., dorms, apartments, mobile home locations) will be determined in close consultation with Nye County staff and appropriate representatives of local government.
- 13.2.2 Identify and coordinate the location of offsite material staging yards to support construction.
- 13.2.3 Develop strategies and coordinate with OCRWM and Nye County staff for other offsite facilities to replace either current onsite facilities or as required by repository mobilization and construction. These may include:
 - A). Sample Management Facility.
 - B). Training Facility.
 - C). Occupational Medical Facility.
 - D). Visitors and Public Access facility.
- 13.2.4 For planning purposes, offsite locations are assumed to be within a one-hour commute of the Site.

14.0 OTHER OFFSITE WORK LOCATIONS

For work scope and activities prior to CA, the M&O shall locate key management and key functional staff workforce in proximity to OCRWM facilities in Las Vegas, Nevada. Remaining staff required to execute work scope may be located in other locations. OCRWM supports virtual office use (telecommuting) for workforce where that function is not required to be within Las Vegas, Nevada. The M&O is also encouraged, though not required, to locate staff as necessary within Nye County.

Following CA, as appropriate, OCRWM will seek to relocate a majority of it and its contractors to locations in proximity to the Site. Similar to the above, these other offsite work locations are assumed to be within a one-hour commute of the Site.

15.0 OCRWM HEADQUARTERS SUPPORT

The M&O will support OCRWM Headquarters in Washington, D.C. The M&O shall:

- 15.1 Provide support in budget development and presentation.
- 15.2 Support for response to Congressional and OCRWM requests.
- 15.3 Support policy development.
- 15.4 Support in communications with the many participants in the nuclear waste generation

through disposal process.

- 15.5 Support in the analysis of policy issues.
- 15.6 Support in licensing strategy development.
- 15.7 Support in the maintenance of the Total System Life Cycle Cost (TSLCC) estimate to be used in preparing a draft Fee Adequacy Report, including the use of value engineering techniques to maintain lowest lifecycle costs consistent with required levels of performance.
- 15.8 Support in processing and verification of utility fee payment data and develop quarterly revenue projections.
- 15.9 Support for TAD development including activities such as design review, licensing advice and review, etc.
- 15.10 Support for waste acceptance functions.

16.0 TRANSPORTATION PROGRAM SUPPORT

It is OCRWM's intention to award a separate contract(s) for support of the Transportation Program. If OCRWM changes its decision regarding a separate contract for support of the Transportation Program, the M&O may be required to provide some or all of the following services.

16.1 Nevada Rail Line Project

- 16.1.1 If directed, the contractor shall develop the design and perform all route characterization activities, including route optimization, to support OCRWM in the development of a standard gauge rail spur (Nevada Rail Line) which shall terminate at the repository site. The contractor shall perform the following:
 - A). Perform preliminary, final, and ready-for-construction design of the Nevada Rail Line.
 - B). Provide engineering design and cost estimate data necessary to define the entire Nevada Rail Line project.
 - C). Coordinate with the OCRWM to effect collection of the remaining hydrologic data necessary for the preparation of construction contracts. The results of the hydrologic analysis work necessary to size all the culverts and bridges shall be incorporated as appropriate into the alignment development and structural and civil design activities undertaken by the Contractor.
 - D). Coordinate with the OCRWM to effect collection of the remaining geotechnical data necessary for the preparation of construction contracts. The results of the geotechnical engineering analysis work shall be incorporated as appropriate into

the alignment development, structural and civil design activities, and ballast and trackwork design activities undertaken by the Contractor.

- E). Perform all Route Optimization activities. The initial elements of this work will involve a reassessment of the route profile and alignment previously developed for the Caliente rail corridor. The Contractor shall analyze and review the input data sets and results of this work and shall identify any anomalies or specific areas where additional study using USGS data may be appropriate.

16.1.2 If directed, the contractor shall support OCRWM in performing construction management support services during the construction of the Nevada Rail Line.

- A). Construction management services shall be performed to help identify defects or deficiencies in the work of Nevada Rail Line construction contractors in determining conformance with the designs and specifications.
- B). The contractor shall provide construction management services which shall include, but are not be limited to:
 - a. Providing qualified construction inspectors, geologists and geologic exploration equipment.
 - b. Construction materials testing.
 - c. Providing personnel and testing equipment.
 - d. Surveying personnel and equipment.
 - e. Providing reviews of designs for constructability.

16.2 National Transportation Project

If directed, the contractor shall assist OCRWM in preparing plans, specifications and materials, conducting analyses, and provide procurement support for OCRWM's National Transportation Program for the shipment of spent nuclear fuel and high level radioactive waste to the repository site. This support shall include the following:

16.2.1 Cask Fleet

- A). The Contractor will assist OCRWM to acquire the transportation fleet including shipment casks for spent nuclear fuel or high level radioactive waste. The Contractor shall prepare any plans that describe the acquisition of fleet transportation cask equipment, transport operations equipment, support equipment for operations at the Site, other Federal sites, and Purchaser sites. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. The Contractor shall perform the following:
 - a. Determine items to be acquired that will be designated as Transportation Equipment, Purchaser Support Equipment, and Federal Facility Support Equipment.
 - b. Describe all services to be acquired.

- c. Detailed equipment identification that will support inventory management requirements.
 - d. An integrated systems schedule, by vendor or system, reflecting the timing of all subcontracting initiatives. It shall include, for example, key milestones for system design and licensing, (if required by the supplier), material acquisition, fabrication, and acceptance testing. The procurement schedule should be consistent with and support the overall waste acceptance and site servicing schedule milestones established by OCRWM.
 - e. Identify and describe locations where major component fabrication, assembly, and other major support work will be performed.
- B). The Contractor will perform systems analyses that describe the strategy and options for how the various equipment items could be procured. The strategy will be developed taking into account the equipment items, the number of supply sources available, schedule needs, and development necessary to deliver the desired equipment item. The analyses will provide for assuring that OCRWM receives the maximum competitive advantage for the procurement available in the market place.

16.2.2 Rolling Stock and Rail Equipment Fleet

A major element of the National Transportation Project is assistance to OCRWM for the acquisition of rolling stock and other rail equipment transportation fleet hardware, encompassing a broad mix of equipment that must be integrated into a comprehensive operating system. OCRWM may task the Contractor to assist OCRWM in the procurement and oversight of manufacturing activities for all or a portion of the transportation fleet and associated hardware.

17.0 LIST OF ACRONYMS

The following acronyms have been used in the preparation of this Statement of Work:

ALARA	As Low As is Reasonably Achievable
AQAP	Augmented Quality Assurance Program
AULG	Affected Units of Local Government
BLM	U.S. Bureau of Land Management
BOP	Balance of Plant
BSAP	Bechtel Standard Application Programs
BWR	Boiling Water Reactor
CA	Construction Authorization
CAP	Corrective Action Program
CCCF	Central Control Center Facility
CD	Critical Decision
CFR	Code of Federal Regulations
CMF	Cask Maintenance Facility
COTS	Commercial Off-the-Shelf

CRCF	Canister Receipt and Closure Facility
CRSS	Cask Receipt Security Station
CTM	Cask Transfer Machine
CTT	Cask Transfer Trolley
DOE	U.S. Department of Energy
DOORS	Dynamic Object Oriented Requirements System®
DPC	Dual Purpose Canister
EAC	Estimate at Completion
EDGF	Emergency Diesel Generator Facility
EM	DOE Office of Environmental Management
ES&H	Environmental, Safety and Health
ESF	Exploratory Studies Facility
FOC	Full Operating Capability
FPD	Federal Project Director
GROA	Geologic Repository Operations Area
HAM	Horizontal Aging Modules
HEMF	Heavy Equipment Maintenance Facility
HLW	High-Level Radioactive Waste
HVAC	Heating, Ventilation, and Air-Conditioning
IHF	Initial Handling Facility
IOC	Initial Operating Capability
IPT	Integrated Project Team
ITS	Important to Safety
LA	License Application
LEED	Leadership in Energy and Environmental Design
LLWF	Low-Level Waste Facility
LSN	Licensing Support Network
M&O	Management and Operating Contractor
NNPP	Navy Nuclear Propulsion Program
NNSA	National Nuclear Security Administration
NRC	U.S. Nuclear Regulatory Commission
NRS	Nevada Revised Statutes
NTS	Nevada Test Site
NWPA	Nuclear Waste Policy Act of 1982, as amended (PL 97-425; 42 U.S.C. 10101)
OCRWM	Office of Civilian Radioactive Waste Management
PC	Performance Confirmation
PCSA	Preclosure Safety Analysis
PEP	Project Execution Plan
PMP	Project Management Plan
PWR	Pressurized Water Reactor
QARD	Quality Assurance Requirements and Description
RAI	Request for Additional Information
REMY	Rail Equipment Maintenance Yard
RF	Receipt Facility
ROV	Remote Operation Vehicle
SAR	Safety Analysis Report

SCWE	Safety Conscious Work Environment
SDGF	Standby Diesel Generator Facility
SFTM	Spent Fuel Transfer Machine
Site	Yucca Mountain Site
SNF	Spent Nuclear Fuel
SOW	Statement of Work
SSC	Systems, Structures or Components
ST	Site Transporter
TAD	Transportation, Aging, and Disposal
TBM	Tunnel Boring Machine
TEV	Transport and Emplacement Vehicle
TSLCC	Total System Life Cycle Cost
TSPA	Total System Performance Assessment
UF	Utilities Facility
USAF	United States Air Force
USGS	U.S. Geological Survey
WBS	Work Breakdown Structure
WHF	Wet Handling Facility
W NRF	Warehouse and Non-Nuclear Receipt Facility
WPCS	Waste Package Closure System
WPTT	Waste Package Transfer Trolley
YM	Yucca Mountain
YMP	Yucca Mountain Project

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SECTION D

PACKAGING AND MARKING

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PACKAGING AND MARKING

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SECTION D

PACKAGING AND MARKING

D.1 PACKAGING

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to ensure acceptance by common carrier and safe transportation at the most economical rates.

D.2 MARKING

Each package, report or other deliverable shall be accompanied by a letter or other document which:

- (a) Identifies the contract number under which the item is being delivered.
- (b) Identifies the contract requirement or other instruction which requires the delivered item(s).

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SECTION E

INSPECTION AND ACCEPTANCE

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SECTION E

INSPECTION AND ACCEPTANCE

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

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

E.2 ACCEPTANCE

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

**E.3 FAR 52.246-11 HIGHER-LEVEL CONTRACT QUALITY
REQUIREMENT (GOVERNMENT SPECIFICATION) (FEB 1999)**

The Contractor shall comply with the specification entitled, "Office of Civilian Radioactive Waste Management (RW) Quality Assurance Requirements and Description" (DOE/RW-0333P), in effect on the contract date and subsequent revisions, which is hereby incorporated into this contract.

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SECTION F

DELIVERIES OR PERFORMANCE

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SECTION F

DELIVERIES OR PERFORMANCE

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SECTION F

DELIVERIES OR PERFORMANCE

F.1 TERM OF THE CONTRACT

- (a) Contract Transition is expected to be from January 1, 2009, through March 31, 2009. Contractor assumes full responsibility for contract performance no later than April 1, 2009.
- (b) The Base Term of the Contract is from April 1, 2009, through March 31, 2014.
- (c) The period of performance may be extended up to an additional period of five years of performance in accordance with the clause in Section F entitled "Option to Extend the Term of the Contract."

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days before the contract expires; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed March 31, 2019.

F.3 EXERCISE OF OPTION(S)

The DOE has included an option to extend the term of this Contract in order to demonstrate the value it places on quality performance. The DOE has provided a mechanism for continuing a contractual relationship with a successful Contractor that performs at a level which meets or exceeds quality performance expectations as communicated to the Contractor, in writing, by the CO or designated representative. When deciding whether to exercise the option, the CO will consider the quality of the Contractor's performance under this Contract.

The CO will determine the duration of the option period(s) at the time of written notification to the Contractor. The total term shall not extend beyond March 31, 2019.

**F.4 FAR 52.242-15 STOP WORK ORDER (AUG 1989) (ALTERNATE I)
(APR 1984)**

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either --
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination clause of this contract.

- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if --
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

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

F.5 STOP WORK AND SHUTDOWN AUTHORITY

Section F Clause, FAR 52.242-15, "Stop Work Order," allows only the Contracting Officer to stop work or shut down facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

Due to the immediate need to stop work due to situations where the Contractor's acts or failures to act cause substantial harm or present an imminent danger to the environment or health and safety of employees or the public, any DOE employee may exercise the stop work authority contemplated in Section I Clause, DEAR 970.5223-1, "Integration of Environment, Safety, and Health Into Work Planning and Execution."

F.6 PRINCIPAL PLACE OF PERFORMANCE

The principal places of performance will be as proposed by the Offeror, and may include the Yucca Mountain site in Nye County, Nevada, Las Vegas, Nevada and Washington D.C. area.

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SECTION G

CONTRACT ADMINISTRATION DATA

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CONTRACT ADMINISTRATION DATA

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CONTRACT ADMINISTRATION DATA

G.1 DOE CONTRACTING OFFICER

For the definition of Contracting Officer see Section I Clause, FAR 52.202-1, "Definitions." The Contracting Officer is the only individual who has the authority on behalf of DOE to take the following actions under the contract:

- (a) Assign additional work within the general scope of the Statement of Work of the contract;
- (b) Issue a change as defined in Section I Clause, DEAR 970.5243-1, "Changes;"
- (c) Change any of the expressed terms, conditions or specifications of the contract;
- (d) Accept non-conforming work; or
- (e) Waive any requirement of this contract.

G.2 DOE CONTRACTING OFFICER'S REPRESENTATIVE(S) (COR)

Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer's Representative(s) in accordance with Section I Clause, DEAR 952.242-70, "Technical Direction." Any change in any DOE COR may be made administratively by letter from the Contracting Officer consistent with the Section I Clause.

G.3 CONTRACT ADMINISTRATION

The contract will be administered by:

U.S. Department of Energy
Office of Civilian Radioactive Waste Management
1551 Hillshire Drive
Las Vegas, NV 89134-6321

Written communications shall make reference to the contract number and shall be mailed to the above address except for correspondence regarding patent or intellectual property related matters which should be addressed to:

U. S. Department of Energy
Office of General Counsel
ATTN: Larry D. Warner
1551 Hillshire Drive
Las Vegas, NV 89134-6321

Information copies of patent related correspondence should also be sent to the DOE Contracting Officer.

G.4 CORRESPONDENCE PROCEDURES (OCT 2004)

All correspondence submitted by the Contractor (except for invoices and reports) shall be subject to the following procedures:

- (a) **Technical Correspondence.** Technical correspondence concerning performance of this contract shall be addressed to the applicable DOE Contracting Officer's Representative (COR) or DOE Contracting Officer's Technical Representative (COTR) or applicable OCRWM Office Director with an information copy of the correspondence to the DOE Contracting Officer.
- (b) **Patents/Technical Data/ Intellectual Property Correspondence.** Correspondence concerning patent, technical data, or intellectual property issues shall be addressed to the Office of General Counsel, ATTN: Larry D. Warner, 1551 Hillshire Drive, Las Vegas, NV 89134-6321, with an informational copy to the DOE Contracting Officer.
- (c) **Non-technical Administrative Correspondence.** All correspondence, other than correspondence addressed in (a) and (b) above, shall be addressed to the DOE Contracting Officer.
- (d) **U.S. Nuclear Regulatory Commission Electronic Information Exchange Correspondence Compliance.** Contractor deliverables are to include a statement of compliance with Electronic Information Exchange guidance from the Nuclear Regulatory Commission, as appropriate.
- (e) **Subject Line(s).** All correspondence shall contain a subject line commencing with the contract number, as illustrated below:

"SUBJECT: Contract No. (Insert the contract number), (Insert subject topic after contract number, e.g., "Request for subcontract placement consent)".

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

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SPECIAL CONTRACT REQUIREMENTS

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 ACTIVITIES DURING CONTRACT TRANSITION

- (a) The Contractor will commence Transition Activities on the effective date of the contract and complete the following activities (to the extent identified in the Contractor's proposal) within ninety (90) days, after contract award, except as otherwise authorized by the Contracting Officer. The Contractor shall coordinate its activities with DOE and the incumbent contractor so as to accomplish these activities in a manner that will provide an effective transition of personnel and work activities while minimizing the cost of this effort. It is currently estimated that Transition Activities will be completed by April 1, 2009. The contractor shall, working with DOE and the incumbent, propose and negotiate a tri-party transfer agreement which identifies the resolution of all matters associated with assuming management and operation of the contract work scope. After completion of the following actions, and such other Transition Activities as may be authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for the management and operation of the contract work scope. Upon receipt of written notification from the Contracting Officer that DOE considers the Transition Activities satisfactorily complete, the Contractor shall assume full responsibility for the contract work scope, effective 12:01 A.M., the next day.
- (1) Management and Operation. Complete the activities that will allow the Contractor to assume full responsibility for the management and operation the contract work scope.
 - (2) Management Systems. Analyze and initiate enhancements, if needed, to the existing management systems (e.g., Integrated Safety Management, Integrated Safeguards and Security Management, Finance, Property, Procurement, Information Management, Life Cycle Asset Management, Human Resources) to assure system adequacy.
 - (3) Assignment of Existing Agreements. Initiate and complete the planning to assume the responsibility for existing regulatory (e.g., environmental permits) and commercial agreements (e.g., subcontracts, purchase orders, leases, etc.) to be assigned to the Contractor by the incumbent, or otherwise taken over by Contractor.

- (4) Joint Reconciliation Property Inventory. Initiate and complete a joint reconciliation property inventory with the incumbent, see Clauses I.140(i)(2)(ii), in accordance with overall guidance provided by the Contracting Officer.
 - (5) Litigation Management. Contractor shall consult with the incumbent and DOE to determine whether the Contractor should assume some level of management of any litigation resulting from activities predating the effective date of this contract. The decision should be based on consideration of cost efficiency, named parties, relevance of retrospective insurance, and DOE litigation management guidelines.
 - (6) Advance Understanding on Human Resources. The Contractor and DOE will begin negotiations within 30 days of initiation of contract transition. This Advance Understanding is intended to document the principles of the Contractor's Human Resource Management (CHRM) programs and other items of allowable personnel costs and related expenses not specifically addressed elsewhere under the Contract. Any changes to the personnel policies or practices in place as of the effective date of this Contract which would increase costs, is subject to approval in advance by the Contracting Officer.
- (b) Except as provided in paragraph (c) below, or as otherwise specifically agreed to by the Contractor and the Contracting Officer, all of the provisions of this contract shall apply to the Contractor's performance of Transition Activities.
- (c) The following contract articles or portions thereof as noted below do not apply to the Contractor's Transition Activities:
- (1) Section C - Statement of Work, except for paragraph 3.2, Transition Activities;
 - (2) Clause F.1 -Term of the Contract, except that pertaining to the Transition Period;
 - (3) Clause H.12 - Contractor Acceptance of Notices of Violations or Alleged Violations, Fines, and Penalties;
 - (4) Clause H.4 - Allocation of Responsibilities for Contractor Environmental Compliance Activities;
 - (5) Clause I.129 - Total Available Fee: Base Fee Amount and Performance Fee Amount;

- (6) Clause I.130 - Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts;
 - (8) Clause I.133 - Work For Others Program (Non-DOE Funded Work);
 - (8) Clause I.152 and I.153 - Preexisting Conditions;
 - (9) Clause I.159 - Work for Others Funding Authorization; and
 - (10) Appendix J- Performance Evaluation and Measurement Plan.
- (d) The contractor shall utilize any government furnished facilities and equipment that are available in order to minimize costs. The Contractor may, subject to agreement with the incumbent contractor, utilize incumbent contractor personnel on a loaned basis or arrange for early transition of employees to the contractor as appropriate. In addition, the contractor may utilize the services of subcontractors of the incumbent contractor with agreement from the incumbent contractor.
- (e) Contractor agrees to perform the activities set forth in paragraph (a) above, including relocation of Contractor’s “Key Personnel,” as described in its Cost Proposal, at an allowable cost not to exceed \$4,945,858. In the event the actual cost of said activities exceeds such amount, Contractor agrees that it will be solely responsible for costs greater than said amount.

H.2 ADDITIONAL DEFINITIONS

- (a) “Affiliate” Business concerns are considered to be affiliates of each other if either one directly or indirectly controls or has the power to control the other, or if another concern controls both. In the case of equal ownership, all companies will be considered an affiliate. In determining whether affiliation exists, factors such as common ownership, common management, and contractual relationships are considered. An Offeror will also be found to be affiliated with its subcontractor(s) if the Offeror is unusually reliant upon its subcontractors or if the subcontractor(s) will perform primary and vital requirements of a contract.
- (b) “Contractor” means the Offeror as specified in Block 15A of Standard Form 33 for Contract No. DE-RW0000005.
- (c) “DOE” and “Department” means the Department of Energy, “FERC” means the Federal Energy Regulatory Commission, and “NNSA” means the National Nuclear Security Administration.

- (d) "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.
- (e) "Head of Agency" means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.
- (f) "OCRWM" means the DOE, Office of Civilian Radioactive Waste Management.
- (g) The term "Senior Procurement Executive" means, for DOE:
- Department of Energy – Director, Office of Procurement and Assistance Management, DOE;
- National Nuclear Security Administration – Administrator for Nuclear Security, NNSA; and
- Federal Energy Regulatory Commission – Chairman, FERC.

H.3 AGREEMENTS AND COMMITMENTS

- (a) The resources proposed to be provided by the Contractor, at no cost to the Government, to support OCRWM, and accepted by the Government, are as follows:

All pre-transition activities identified in USA-RS' Volume II, entitled, "Capabilities and Approach Proposal," Appendix 2 entitled, "Transition Plan." Pre-transition activities include:

- Development of Transition project execution procedure including level 3 resources loaded master schedule
- Assignment of subject matter experts to teams to assist with the due diligence reviews and related transition activities
- Advance development and preparation of Human Resources and other business programs including principles in the "Advanced Understanding of Human Resources," USA-RS' "Workplace Substance Abuse Program," "Human Resource Management Plan," "Legal Management Plan," and "Risk Management Plan"

- Continuing to familiarize themselves with the license application and pre-closure safety analysis
 - Conducting preparatory activities toward the turnover of site business systems, i.e., financial, procurement, and project control systems
 - Continuing to enhance relationships with the stakeholders in Nevada including regulatory agencies, political entities, labor unions, and county and community governments and leaders
 - Advance work on communication activities including development of transition website, development of media kits and announcements, development of communication plan and schedule, identify locations for town hall meetings, drafting initial employee communication bulletins, and creation of stakeholder databases
 - Mobilizing the key team to Las Vegas before transition starts
- (b) The Contractor will provide to the Contracting Officer an annual report of accomplishments against the commitments specified above at the end of each fiscal year. The Contractor agrees that such reports may be made available to the public. The Contractor shall make available to DOE data that will validate the accomplishment of these commitments.
- (c) The cost associated with the Contractor's efforts in achieving its commitment under this clause is not an allowable cost under this Contract.
- (d) Any written commitment by the Contractor within the scope of this contract shall be binding upon the Contractor. Failure of the Contractor to fulfill any such commitment shall be considered in past performance determinations and may be considered in the annual award fee determination process and determining to exercise an option period.

H.4 ALLOCATION OF RESPONSIBILITY AND LIABILITY FOR CONTRACTOR AND U.S. DEPARTMENT OF ENERGY (DOE) ENVIRONMENTAL COMPLIANCE ACTIVITIES

- (a) In this Clause:
- (1) "Environmental" requirements means requirements imposed by applicable Federal, state, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, compliance agreements, consent orders, permits, and licenses; and
 - (2) "Party" means either the Contractor or DOE.

- (b) Responsibility and liability for fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation regardless of which party:
 - (1) The cognizant regulatory authority fines or penalizes;
 - (2) Signs permit applications (including situations where DOE signs defective or non-conforming permit applications or other environmental submittals prepared by or under the direction of the Contractor), manifests, reports, or other required documents;
 - (3) Is a permittee; or
 - (4) Is the named subject of an enforcement action or assessment of a fine or penalty.
- (c) Consequently, if the Contractor causes a violation:

All fines and penalties arising from or related to violations of environmental requirements are unallowable costs. If DOE pays a fine or penalty for a violation that the Contractor caused, the amount of the fine or penalty shall be due from the Contractor, and DOE may immediately offset that amount against payments to which the Contractor is otherwise entitled for allowable costs and fee, or any other funds otherwise owed by the Government to the Contractor; and

H.5 APPLICATION OF DOE DIRECTIVES AND ALTERNATIVES

- (a) Performance: The Contractor shall perform the work of this contract in accordance with each of the DOE directives appended to this contract as Section J, Appendix E unless the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.
- (b) Laws and Regulations Excepted: This clause augments the requirements in Section I entitled, "Laws, Regulations, And DOE Directives,"(DEAR 970.5204-2) and DOE M 251.1-1A for purposes of addressing alternatives to DOE directives. The process described in this clause does not affect the application of applicable laws and regulations.
- (c) Deviation Processes in Existing Orders: This clause does not replace the use of deviation processes provided for in existing DOE directives.

- (d) Proposal of Alternative: The Contractor may, at any time during performance of this contract, propose an alternative procedure, system of oversight, or assessment mechanism to the requirements in a listed directive by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized in performance under the contract, and a schedule for implementation of the alternate. The Contractor shall include an assurance signed by the General Manager that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the proposal.
- (e) Action of the Contracting Officer: The Contracting Officer shall within sixty (60) calendar days:
- (1) Deny application of the proposed alternative;
 - (2) Approve the proposed alternative, with conditions or revisions;
 - (3) Approve the proposed alternative; or
 - (4) Provide a date by which a decision shall be made (not to exceed an additional sixty (60) calendar days).
- (f) Implementation and Evaluation of Performance: Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the General Manager, that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. This statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. The Government shall evaluate performance of the approved alternative from the Contractor's scheduled date for implementation.
- (g) Application of Additional or Modified Directives: During performance of the contract, the Contracting Officer may notify the Contractor that OCRWM intends to unilaterally add directives not then listed in Section J, Appendix E entitled "List of Applicable DOE Directives (List B)" or make modifications to listed directives. Within thirty (30) calendar days of receipt of that notice, the Contractor may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of

this clause. If an alternative proposal is not submitted within the thirty (30) calendar-day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the directive or modification to Section J, Appendix E. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the directive or modification.

- (h) Deficiency and Remedial Action: If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, at his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the directive.

H.6 APPROVAL OF EXPENDITURES

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

H.7 COMPLIANCE WITH FIPS PUBLICATION 201

This contract involves the acquisition of hardware, software, or services related to physical access to Federal premises or electronic authentication or access control to a Federal Agency's computer systems and electronic infrastructure. Any such hardware, software, or services delivered under this contract shall comply with FIPS Pub 201, and FIPS Pub 201 shall take precedence over any conflicting performance requirements of this contract. Should the Contractor find that the statement of work or other specifications of this Contract do not conform to FIPS Pub 201, it shall notify the Contracting Officer of such nonconformance and shall act in accordance with instructions from the Contracting Officer.

H.8 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY

The Contractor must comply with Internet Protocol version 6 (IPv6) standards in its purchases of information technology (IT) involving IP products. The Contractor must identify an employee to act as a liaison with the Chief Information Officer (CIO) when needed and comply with the requirements in Acquisition Letter (AL) 2006-04. The Contractor must flow down these

requirements in all subcontracts in their purchases of IT involving IP products.

H.9 COMPLIANCE WITH 10 CFR PART 21

The Contractor shall promulgate programs and procedures that conform to the requirements of 10 CFR Part 21 and any related Nuclear Regulatory Commission guidance or guidance deemed to be applicable by the DOE. Such programs and procedures shall be effective at the time of contract award.

H.10 CONFIDENTIALITY OF INFORMATION

- a. To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
- (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.
- b. The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.
- c. The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the Contracting Officer.

- d. The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- e. This clause shall flow down to all appropriate subcontracts.

H.11 CONSECUTIVE NUMBERING

Due to automated procedures employed in formulating this document, clauses contained within it may not always be consecutively numbered.

H.12 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

- (a) The Contractor shall accept, in its own name, service of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this contract.
- (b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

H.13 CONTRACTOR ACCEPTANCE OF OCRWM BASELINE DOCUMENTATION

The Contractor shall accept the Office of Civilian Radioactive Waste Management baseline documentation and maintain the baseline in accordance with the Baseline Change Control System (Reference DOE/RW-0409), and the Configuration Management Information System (Reference DOE/RW- 0415).

H.14 CONTRACTOR EMPLOYEES

The Contractor shall be responsible for the employment of all professional, technical, skilled and unskilled personnel engaged by the Contractor to carry out the work under this Contract. Persons employed by the Contractor shall remain employees of the Contractor and shall not be deemed employees of the DOE or the Government; however, nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

H.15 CONTROL OF NUCLEAR MATERIALS

- (a) As used in this clause, “nuclear materials” means source material, special nuclear material, and other materials to which DOE Directives regarding the control of nuclear materials apply.
- (b) The Contractor shall, in a manner satisfactory to the Contracting Officer, establish and maintain a materials management program, establish and maintain appropriate nuclear material transfer procedures and control measures, establish accounting and measurement procedures, maintain current records, and institute appropriate control measures for nuclear materials in its possession commensurate with the national security and applicable DOE Directives.
- (c) In addition to adhering to the contractor requirements document for DOE M 470.4-6, Nuclear Material Control and Accountability, the contractor will ensure the following:
 - (1) Any nuclear material maintained and/or used by the Contractor must be identified by the Nuclear Material Management and Safeguards System (NMMSS) “locality” Reporting Identification Symbol (RIS) UGH.
 - (2) In addition to using a “locality” RIS as indicated above, a “programmatically” RIS must be used to identify the DOE Program Office funding/sponsoring the work along with an associated NMMSS project number.
- (d) Except as otherwise authorized by the Contracting Officer, nuclear materials in the Contractor’s possession, custody, or control shall be used only for the furtherance of the work under this contract.
- (e) The nuclear material management process shall work with other aspects of property management sectors within OCRWM to ensure that unneeded inventories, to include unneeded nuclear materials (i.e., nuclear materials that are not associated with an active project) are managed appropriately. All legacy material shall be dispositioned, as appropriate, to one of the following:
 - Another programmatically funded project;
 - an approved waste stream; or
 - Another DOE facility in response to an Excess Material Notice.
- (f) The Contractor shall include in every subcontract involving the use of nuclear materials, for which the Contractor has accountability, appropriate

terms and conditions for the use of nuclear materials and the responsibilities of the subcontractor regarding control of nuclear materials.

H.16 CRITICAL STAFF

- (a) The personnel listed elsewhere in this contract (Section J, Appendix F) are considered critical staff functions necessary to support the successful defense of the License Application. Critical staff will provide engineering subject matter expertise in the following subject areas: Canister Transfer Machine; Waste Package Transfer Trolley; Transport and Emplacement Vehicle; Cask Transfer Trolley; Criticality and Nuclear; Subsurface Thermal Management; Preclosure Safety Analysis; Waste Package and Drip Shields; Waste Package Closure System; NOG-1 Cranes; Subsurface Design; Structural Seismic Design; and Transport, Aging, and Disposal (TAD) Canister interface with repository systems. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

H.17 DAVIS BACON COMPLIANCE

The DOE will determine the appropriate labor standards that apply to work activities in accordance with the Davis Bacon Act. When requested by the DOE, the Contractor shall provide the Contracting Officer with information that may be necessary for DOE to render a determination regarding the applicability of the Davis Bacon Act to particular work to be performed by the Contractor under the Contract. The requested information must be provided in the form and timeframe required by DOE.

In accordance with the Contract's Section I Clause, DEAR 970.5244-1, Contractor Purchasing System, subcontractors awarded by the Contractor are subject to the Davis Bacon Act to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer will

develop a procedure whereby DOE will determine whether the Davis Bacon Act is applicable to particular subcontracts.

The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by DOE on all Davis Bacon activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Contractor shall report them to the DOE Contracting Officer. The Contracting Officer may require that the Contractor assist in the determination of the amount of restitution and withholding of funds from a subcontractor so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.

The Contractor shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Contractor shall assist DOE and or/the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semi-Annual Enforcement Report to DOE by April 21 and October 21 each year.

H.18 DISPOSAL OF REAL PROPERTY

Disposal of any permanent or temporary interest in real property shall require the prior approval of the Contracting Officer.

H.19 DOE MENTOR-PROTÉGÉ PROGRAM

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall Mentor at least one active Protégé company at all times during the performance on this contract. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the Mentor-Protégé agreements or the contract whichever occurs first.

H.20 ELECTRONIC SUBCONTRACTING REPORTING SYSTEM

The requirement for the submittal of paper versions of the Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports, as provided in FAR 52.219-9(j) is hereby deleted and is replaced with the electronic submittal of data under the Electronic Subcontract

Reporting System (eSRS).

The offeror's subcontracting plan shall include assurances that the offeror will (1) submit the Individual Subcontracting Reports and Summary Subcontracting Reports under the eSRS and (2) ensure that its subcontractors agree to submit Individual Subcontracting Reports and Summary Subcontracting Reports at all tiers, in eSRS.

The contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702.

H.21 EMPLOYEE COMPENSATION: PAY AND BENEFITS

(a) Human Resources Compensation Plan

The Contractor shall submit by close of contract transition, a *Human Resources Compensation Plan* demonstrating how the Contractor will comply with the requirements of this Contract. The *Human Resources Compensation Plan* shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

(b) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services" (Total Compensation System"). DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Human Resources Compensation Plan as approved by the Contracting Officer.

(c) Appraisals of Contractor Performance

DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's

performance self-assessment of its Total Compensation System or third party expert review.

(d) Reports and Information

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation.
- (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.
- (4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in paragraph (f) below.

(e) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

- (1) Incumbent Employees are the employees who hold regular appointments, excluding discretionary incumbent management positions as defined in Section L Appendix 5, of the performing entity as of date of award.
 - (A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by Bechtel SAIC,

LLC for at least the first year of the term of the Contract.

- (B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by Bechtel SAIC, LLC. Comparability of the total benefit package shall be determined by the CO in his/her sole discretion.

Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law. The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, for Incumbent Employees and retired plan participants, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.

- (2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

- (A) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:
- (i) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the total compensation system.
 - (ii) Any proposed major compensation program design changes prior to implementation.
 - (iii) An Annual Compensation Increase Plan (CIP).
 - (iv) Individual compensation actions for the Key

Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan.

- (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).
- (B) The Contracting Officer's approval of individual compensation actions will be required only for the General Manager, and all other named Key Personnel, as identified by the Contracting Officer.
- (C) Severance Pay is not payable to an employee under this Contract if the employee:
 - (i) Voluntarily separates, resigns or retires from employment,
 - (ii) Is offered employment with a successor/replacement contractor,
 - (iii) Is offered employment with a parent or affiliated company, or
 - (iv) Is discharged for cause.
- (D) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.
- (f) Pension and Other Benefit Programs
 - (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for either Incumbent Employees or Non-Incumbent Employees until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
 - (2) Cost reimbursement for Incumbent Employee and Non-Incumbent Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.
 - (3) Unless otherwise stated, or as directed by the Contracting Officer,

the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor as part of its performance self assessment described in paragraph (d) (4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.

- (A) An Employee Benefits Value Study (Ben-Val), every two years each for Incumbent and Non-Incumbent Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Incumbent and Non-Incumbent Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,
 - (B) An Employee Benefits Cost Study Comparison, annually each for Incumbent and Non-Incumbent Employees that analyzes the Contractor's employee benefits cost for Incumbent and Non-Incumbent Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer.
 - (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.
 - (6) Within two years of Contracting Officer approval of the

Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.

- (7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
 - (8) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
 - (9) Cost reimbursement for PRBs is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
- (g) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- (1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the IRC and ERISA.
 - (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable laws and regulations.
 - (3) Non-Incumbent Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
 - (4) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for service not performed under a DOE cost-reimbursement contract.
 - (5) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the Contracting Officer with the following information within nine months of the

last day of the current pension plan year.

- (A) Copies of IRS forms 5500 with schedules; and
 - (B) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
- (6) Prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources Compensation Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.
- (A) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and,
 - (B) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
 - (C) The Contractor shall not terminate any pension plan without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.

H.22 ENVIRONMENTAL RESPONSIBILITY

- (a) General. The Contractor is required to comply with all environmental laws, regulations, and procedures applicable to the work being performed under this Contract. This includes, but is not limited to, compliance with applicable Federal, State and local laws and regulations, interagency agreements, consent orders, consent decrees, and settlement agreements between the U. S. Department of Energy (DOE) and Federal and state regulatory agencies.

- (b) Environmental Permits. This Clause addresses three permit scenarios, where the Contractor is the sole permittee; where the Contractor and DOE are joint permittees; and where multiple Contractors are permittees.
- (1) Contractor as Sole Permittee. To the extent permitted by law and subject to other applicable provisions of the Contract that impose responsibilities on DOE, and provisions of law that impose responsibilities on DOE or third parties, the Contractor shall be responsible for obtaining in its own name, shall sign, and shall be solely responsible for compliance with all permits, authorizations and approvals from Federal, State, and local regulatory agencies which are necessary for the performance of the work required of the Contractor under this Contract. Under this permit scenario, that Contractor shall make no commitments or set precedents that are detrimental to DOE or other contractors. The Contractor shall coordinate its permitting activities with DOE, and with other OCRWM contractors which may be affected by the permit or precedent established therein, prior to taking the permit action.
 - (2) Contractor and DOE as Joint Permittees. Where appropriate, required by law, or required by applicable regulatory agencies, DOE will sign permits as owner or as owner/operator with the Contractor as operator or co-operator, respectively. DOE will co-sign hazardous waste permit applications as owner/operator where required by applicable law. In this scenario, the Contractor shall coordinate its actions with DOE. DOE is responsible for timely notification to the Contractor of any issues or changes in the regulatory environment that impact or may impact Contractor implementation of any permit requirement. The Contractor shall be responsible for timely notification to DOE of any issues or changes in the regulatory environment that impact or may impact Contractor implementation of any permit requirement. Notification need not be in writing.
 - (3) Multiple Contractors as Permittees. Where appropriate, in situations where multiple contractors are operators or co-operators of operations requiring environmental permits, DOE will sign such permits as owner or co-operator and affected contractors shall sign as operators, or co-operators. In this scenario, the Contractor shall coordinate as appropriate with DOE and other contractors affected by the permit.
- (c) Permit Applications. The Contractor shall provide to DOE for review and comment in draft form any permit applications and other regulatory materials necessary to be submitted to regulatory agencies for the purposes of obtaining a permit. In the event that the permit application is required

to be co-signed, submitted by DOE, or is related to a permit in which DOE is a permittee, the Contractor shall provide the application for review and comment. Whenever reasonably possible all such materials shall be provided to DOE initially not later than 90 days prior to the date they are to be submitted to the regulatory agency. The Contractor shall normally provide final regulatory documents to DOE at least 30 days prior to the date of submittal to the regulatory agencies for DOE's final review and signature or concurrence which shall be performed by DOE in a prompt manner. Special circumstances may require permits to be submitted in a shorter time frame. The Contractor may submit for DOE's consideration, requests for alternate review, comment, or signature, schedules for environmental permit applications or other regulatory materials covered by this Clause. Any such requests shall be submitted 30 days before such material would ordinarily be required to be provided to DOE. Any such schedule revision shall be effective only upon approval from the Contracting Officer.

- (d) **Financial Responsibility.** DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this Contract, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE will provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

- (e) **Copies, Technical Information.** The Contractor shall provide DOE copies of all environmental permits, authorizations, and regulatory approvals issued to the Contractor by the regulatory agencies. DOE will, upon request, make available to the Contractor access to copies of all environmental permits, authorizations, and approvals issued by the regulatory agencies to DOE that the Contractor may need to comply with applicable law. The Contractor and DOE will provide to each other copies of all documentation, such as, letters, reports, or other such materials transmitted either to or from regulatory agencies relating to the Contract work. The Contractor and DOE shall maintain all necessary technical information required to support applications for revision of DOE or other OCRWM Contractor environmental permits when such applications or revisions are related to the Contractor's operations. Upon request, the Contractor or DOE shall provide to the other access to all necessary and available technical information required to support applications for or revisions to permits or permit applications. The Contractor shall provide to DOE a certification statement relating to such technical information in the form required by the following paragraph.

- (f) **Certifications.** The Contractor shall provide a written certification statement attesting that information DOE is requested to sign was prepared in accordance with applicable requirements. The Contractor shall include the following certification statement in the submittal of such materials to DOE:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The certification statement shall be signed by the individual authorized to sign such certification statements submitted to Federal or state regulatory agencies under the applicable regulatory program.

- (g) **Fines, Penalties, Allowable Costs.** The Contractor shall accept, in its own name, service of proposed notices, or notices of, correction, penalty, fine, violation, administrative orders, citation, or notice of alleged violations, (e.g., Notice of Correction [NOC], Notice of Penalty [NOP], Notice of Fine [NOF], Preliminary Notice of Violation [PNOV], Notice of Violation [NOV], and Notice of Alleged Violation [NOAV]) and any similar type notices issued by Federal or State regulators to the Contractor resulting from or relating to Contractor's performance of work under this Contract, without regard to liability. The Contractor shall immediately notify DOE of such receipt and shall provide copies or originals of such documents as soon as possible thereafter.
- (h) **Negotiations.** DOE may in its discretion choose to be in charge of, and direct, all negotiations with regulatory agencies regarding permits, fines, penalties, and any other proposed notice, notice, administrative order, and any similar type of notice as described in paragraph (g) above. As directed or required by DOE, the Contractor shall participate in negotiations with regulatory agencies; however, the Contractor shall not make any commitments or offers to regulators purporting to bind or binding the Government in any form or fashion, including monetary obligations, without receiving written authorization or concurrence from the Contracting Officer or his/her authorized representative prior to

making such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

- (i) Termination, Expiration, Permit Transfer. In the event of expiration or termination of this Contract, DOE may require the Contractor to take all necessary steps to transfer on an allowable cost basis some or all environmental permits held by the Contractor. DOE will assume responsibility for such permits, with the approval of the regulating agency, and the Contractor shall be relieved of all liability and responsibility to the extent that such liability and responsibility results from the acts or omissions of a successor Contractor, DOE, or their agents, representatives, or assigns. The Contractor shall remain liable for all unresolved costs, claims, demands, fines and penalties, including reasonable legal costs, arising prior to the date such permits are transferred to another party. The Contractor shall not be liable for any such claims occurring after formal transfer unless said claims result from the Contractor's action or inaction that occurred prior to transfer.
- (j) Miscellaneous. The Contractor shall accept assignment or transfer of permits pertaining to matters under this Contract currently held by DOE and its existing Contractor. The Contractor may submit for DOE's consideration, requests for alternate review, comment, or signature schedules for environmental permit applications or other regulatory materials covered by this Clause. Any such schedule revision shall be effective only upon written approval from the Contracting Officer.

H.23 FACILITIES CAPITAL COST OF MONEY

The request for proposal for this contract did not require a cost proposal to which facilities capital cost of money would apply. Therefore, clause I.21 52.215-17, *Waiver of Facilities Capital Cost of Money* is included in the contract. However, if during the performance of the contract the Contractor elects to claim facilities capital cost of money as an allowable cost, the Contractor shall submit, for approval of the Contracting Officer, a proposal, including Form CASB-CMF which shows the calculation of the proposed amount (see FAR 31.205-10).

H.24 LABOR RELATIONS

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.

- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

H.25 LICENSING SUPPORT NETWORK (LSN) REQUIREMENTS

The contractor organization is responsible for complying with the requirements and actions specified in the attached memorandum from David R. Hill, General Counsel, dated November 3, 2006 (See Section J, Appendix L). LSN certification and updated certifications dates will be provided under separate notification. LSN Responsible Managers and Point of Contact should be identified within 30 days of contract award to the DOE LSN Project Manager identified in Section J, Appendix L.

H.26 LOBBYING RESTRICTION

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

H.27 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual authorized to:

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

H.28 NO THIRD PARTY BENEFICIARIES

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

H.29 RESERVED

H.30 PLANNED PROCUREMENTS

The contractor will provide to the contracting officer a schedule of planned procurements (including subcontracts, purchase orders, etc.) Or modifications to same, over \$100k for a 24 month period. Such schedules shall be updated and submitted by each september 15 and march 15 with the first schedule due september 15, 2009. The schedule shall reflect estimated value, type of subcontract, purchase order, etc., description of service or product and, if applicable, a justification for other than firm fixed price, sealed bid, subcontract agreements.

H.31 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

- (a) If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the Yucca Mountain Project (collectively, the "Plans"), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer.
- (b) If this Contract expires or terminates and DOE has not awarded a contract

to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:

- (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.

- (1) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable Contract provisions.

H.32 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE

The Contractor shall establish an internal Price Anderson Amendments Act noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price Anderson Amendments Act reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.33 PRIVACY ACT SYSTEMS OF RECORD

To the extent that the Contractor maintains Government-owned records in the performance of this contract that constitutes a Privacy Act System of Records as defined in the Department of Energy's most current Privacy Act System Notice published in the Federal Register on or after June 30, 2003, the Contractor shall maintain the records in accordance with the clause of this contract entitled Privacy Act.

H.34 RECOGNITION OF PERFORMING ENTITY

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

TO BE PROVIDED BY OFFEROR

- (b) Accordingly, the Contractor and the Government agree that:

The Contractor shall take no action to replace the components of the Offeror named in (a) above without approval of the CO.

H.35 REIMBURSEMENT OF COST AND ALLOWABLE COST PRINCIPLES FOR TRANSITION PERIOD

- a. Reimbursement of allowable cost for the transition period will be through the voucher (i.e., invoice) process. DOE will provide the selected Offeror with a detailed description of DOE's voucher process at time of transition.
- b. Allowability of costs for the transition period shall be determined in accordance with Federal Acquisition Regulation 52.216-7, "Allowable Cost and Payment."

H.36 RELEASE OF INFORMATION

Any proposed public release of information including news releases, publications, fact sheets, exhibits, or audiovisual productions pertaining to the work called for in this contract shall be submitted for approval prior to actual printing and distribution. Approval must be obtained from the Contracting Officer with coordination from Office of External Affairs. All proposed releases should conform to the requirements of the applicable OCRWM procedures pertaining to the public release of information (see Section J, Appendix E).

H.37 REPORTING REQUIREMENTS

a. Work Breakdown Structure (WBS)

The Contractor shall adopt the OCRWM Program WBS. The Contractor may propose changes to the WBS subject to OCRWM approval. The Program WBS shall be the basis for all reports required by this subsection. The Contractor's review of the WBS index and Dictionary shall be submitted to the Contracting Officer by April 1, 2009.

b. Periodic Plans and Reports

The Contractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the Statement of Work and the Contracting Officer. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The plans and reports expected to be submitted by the Contractor are described generally as follows:

General Management Reports narratively summarize schedule, labor, and cost plans and status, and provide explanations of status variances from plans.

Schedule/Labor Cost Reports provide information on schedule, labor and cost plans and status.

Performance Measurement Reports provide earned value cost and schedule performance data, both cumulative and at completion, as well as milestone status, financial status, and technical performance. Also provided in these reports are analyses of cost and schedule performance trends, and identification of actual and potential problems. Integrated technical, cost and schedule variance analyses and corrective action plans will be provided if variances exceed DOE reporting thresholds provided by the Contracting Officer. Performance will be reported to DOE at the lowest level elements of the Program WBS unless directed differently by the Contracting Officer.

Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.

Contract Fund Status Reports provide outstanding commitments plus incurred costs in order to ensure that authorized funding limits will not be

exceeded and to provide early warning if funding limits could be exceeded.

Letter Reports, if requested by DOE, provide quick response information on inquiries or sudden problems/issues.

Plans and reports shall be prepared by the Contractor in such a manner as to provide for:

- (1) consistency with the contract Statement of Work, the WADs, the approved WBS and the existing accounting structure, as appropriate.
- (2) correlation of data among the various plans and reports.

c. Changes in Work Effort

The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Authorization System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the Scope of Work or WADs. The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer:

- (1) incorporate contractual changes affecting estimated cost, schedule, and other relevant terms and conditions of the contract, in a timely manner;
- (2) reconcile estimated costs for those elements of the WBS identified in the contract as either priced line items or discrete WADs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:
 - (a) Changes to the authorized work; and,
 - (b) Internal replanning in the detail needed by management for effective control;
- (3) prohibit retroactive changes to records pertaining to work performed that will change previously-reported costs except for correction of errors and routine accounting adjustments;
- (4) prevent revisions to the contract estimated costs except for

- Government-directed or approved changes to the contractual effort; and
- (5) document changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- d. The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's reporting system described in (b) above.
- e. The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when:
- (1) the value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, or
 - (2) the Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the contract.

H.38 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications, and Other Statements of USA-RS for this contract are, by reference hereby incorporated in and made a part of this contract and are dated as follows:

- USA Repository Services LLC – July 19, 2008
- Washington Group International, Inc. – July 19, 2008
- Shaw Environmental & Infrastructure, Inc. – July 16, 2008
- AREVA Federal Services LLC – July 24, 2008

H.39 RESPONSIBLE CORPORATE OFFICIAL

The Contractor shall provide a Guarantee of performance from its parent company in the form set forth in the Section J Attachment entitled, *Performance Guarantee Agreement*. If the Contractor is a joint venture, newly-formed Limited Liability Company (LLC), or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall each provide Guarantees for joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer. Notwithstanding the provisions of this Clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the Contractor regarding Contractor performance issues:

Name: Thomas H. Zarges
Position: President
Company/Organization: URS Washington Division
Address: 720 Park Blvd., Boise, ID 83712
Phone: (208) 386-5354
Facsimile: (208) 386-5379
Email: tom.zarges@wgint.com

Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

H.40 SAFETY CONSCIOUS WORK ENVIRONMENT

In conformity with the Nuclear Regulatory Commission's (NRC) May 14, 1996, Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" (61 Federal Register 24336), the Contractor must maintain a working environment in which the Contractor's employees are free to raise safety concerns to the Contractor, to the DOE, or to other government agencies without fear of retaliation.

The Contractor specifically agrees to comply with Section 211 of the Energy Reorganization Act (42 U.S.C.A. § 5851), which prohibits NRC licensees or applicants for a license and their contractors or subcontractors, and DOE contractors with Price Anderson indemnification, from discharging or otherwise discriminating against any employee because he or she (i) notifies his/her employer of an alleged violation of the Atomic Energy Act or the Energy Reorganization Act; or (ii) refuses to engage in any practice made unlawful by either of said acts after having identified the alleged illegality to his/her employer; or (iii) testifies in or commences a Federal or State proceeding or enforcement action relating to either of said acts; or (iv) assists or participates in such a proceeding or in any other action to carry out the purpose of said acts.

The Contractor shall inform its employees and management of the importance of raising safety concerns and how to raise safety concerns through the Contractor's management, through the DOE's management (including, without limitation, use of the OCRWM Employee Concerns Program), and through other government agencies.

H.41 SEPARATE CORPORATE ENTITY AND PERFORMANCE GUARANTEE

- (a) The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent organization(s). The separate corporate entity must be set up solely to perform this

Contract and shall be totally responsible for all Contract activities.

- (b) The Contractor's parent organization(s) or all member organizations, shall guarantee the Contractor's performance as evidenced by the Performance Guarantee(s) incorporated in the contract in Section J, Appendix G. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the contract.
- (c) In the event any of the signatories to the performance guarantee enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.42 SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

The Service Contract Act of 1965 is not applicable to this contract. However, in accordance with I Clause– DEAR 970.5244-1 – Contractor Purchasing System (MAY 2006), subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Act, the Contractor shall prepare SF-98 and 98A “Notice of Intention to Make a Service Contract” and forward it to the Contracting Officer or designee to obtain a wage determination.

H.43 SIGNIFICANT MATTERS FOR LEGAL MANAGEMENT PURPOSES

The following are “significant matters” under 10 CFR § 719.2; therefore, the contractor must comply with 10 CFR Part 719 regarding the following matters:

- (a) An employee complaint filed under the Department of Energy regulations at 10 CFR Part 708, “DOE Employee Protection Program”;
- (b) An employee complaint filed under the Federal Acquisition Regulation at 48 CFR Subpart 3.9, “Whistleblower Protections for Contractor Employees”;
- (c) An employee complaint filed under the Nuclear Regulatory Commission regulations at 10 CFR 63.9, “Employee protection”; or
- (d) An employee complaint filed under any other employee protection regulations that implement Section 211 of the Energy Reorganization Act, 42 U.S.C.A. § 5851.

This clause must be flowed down to all subcontracts.

H.44 SMALL BUSINESS SUBCONTRACTING PLAN

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

H.45 SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

The Contractor shall provide in accordance with DOE requirements, a Special Financial Institution Account Agreement which shall be in place prior to assuming full responsibility for the performance of the contract. This agreement shall be included as Section J, Appendix B.

H.46 STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION

- (a) Use of objective standards of performance, self assessment and performance evaluation:
 - (1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach to execute the Contract including the Statement of Work. The performance-based management approach will include the use of performance goals, objectives, measures, and targets, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance under this Contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management.
 - (2) The Parties agree to utilize the process described within Part III, Section J, Appendix J - "Performance Evaluation and Measurement Plan" (PEMP) to evaluate the performance of the M&O Contractor. The Parties further agree that the evaluation process described in Appendix J will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.

- (3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the Contract Statement of Work and performance indicators identified within Part III, Section J, Appendix J. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization(s), as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.
- (4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Appendix J and in accordance with requirements of Section C. The Contractor shall provide formal status briefings monthly, and a formal self-evaluation report to the DOE at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings and reports shall be agreed to by the M&O contractor and the DOE Contracting Officer. In addition, the mid-year and year-end report must provide:
 - (i) an overall summary of performance for the performance period;
 - (ii) rating for each performance objective and measure supporting the performance goal, against the agreed to performance target: and,
 - (iii) a summary of key strengths and opportunities for improvement.
- (5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide a semi-annual and annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract. The Office of Civilian Radioactive Waste Management, through the OCRWM Head of Contracting Activity, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.
- (6) The Contracting Officer shall annually provide a written assessment of the Contractor's performance to the Contractor, which shall be based upon the process described in Appendix J. The Parties acknowledge that the performance levels achieved against the specific performance goals, objectives, measures, and

targets shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix J that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, external reviews (e.g., NRC, OIG, GAO, DCAA, etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may be rewarded with less frequent – or no – review of the functional area. Conversely, marginal performance or "for cause" situations may result in more frequent reviews.

- (b) Standards of performance measure review:
- (1) The Parties agree to review the PEMP elements (goals, objectives, measures, and targets, and expected levels of performance) contained in Appendix J annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, measures, and targets, for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, measures, and targets and/or to modify and/or delete existing goals, objectives, measures, and targets. It is expected that the goals, objectives, measures, and targets will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.
 - (2) Failure to include a goal, objective, measure, or target in the contract Appendix J does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.
 - (3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision thirty days prior to issuance.

H.47 SUBCONTRACTS CONSENT AND FLOW DOWN REQUIREMENTS

- a. Prior to the placement of subcontracts and in accordance with the Section I, Contract Clause, DEAR 970.5244-1, entitled, "Contractor Purchasing System," the Contractor shall ensure that:
- (1) They contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts. Particular attention should be directed to the potential flow down applicability of the Section I, Contract Clauses, FAR 52.219-8, entitled, "Utilization of Small Business Concerns" and FAR 52.219-9, entitled, "Small Business Subcontracting Plan;”
 - (2) Any applicable subcontractor Certificate of Current Cost or Pricing Data (see FAR 15.804-2) and subcontractor Representations and Certifications are completed; and
 - (3) Any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

H.48 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

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

H.49 WALSH-HEALEY PUBLIC CONTRACTS ACT

Except as otherwise may be approved in writing by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an

amount which exceeds or may exceed \$10,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35), they are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

H.50 WITHDRAWAL OF WORK

- (a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another contractor or performed by Government employees.
- (b) Work may be withdrawn: (1) in order for the Government to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the contractor; or (4) for any other reason deemed by the Contracting Officer to be in the best interests of the Government.
- (c) If any work is withdrawn by the Contracting Officer, the contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.
- (d) DOE may identify areas for direct federal contracts with small businesses that are currently provided under YMP M&O subcontracts and may be awarded in the future by DOE as prime contracts as the current subcontracts expire.

H.51 WORK AUTHORIZATION SYSTEM

- a. Prior to the start of each Fiscal Year, the DOE shall provide the Contractor program execution guidance in sufficient detail to develop an annual work plan. The Contractor shall submit to the Contracting Officer or other designated official, an annual work plan to include a detailed Scope of Work (SOW), a budget of estimated costs, and a schedule of performance for the work to be performed during the next Fiscal Year. This annual work plan shall comply with requirements of Section C of the Contract.
- b. The Contractor and DOE shall mutually establish a budget of estimated costs, detailed SOW, and schedule of performance for each milestone/deliverable at level 3 or as otherwise specified by Section C of the Contract and the Contracting Officer. The established estimated costs, detailed SOW, and schedule of performance shall be incorporated into WADs, signed by the Contractor and issued by the Contracting Officer, which are incorporated by reference into this Contract. If agreement cannot be reached on the scope, schedule, and estimated cost for the

WADs, the Contracting Officer shall issue unilateral WADs pursuant to this clause which shall not be subject to appeal under the Section I, Contract Clause, FAR 52.233-1, entitled "Disputes."

- c. No activities shall be authorized and no costs incurred until either the Contracting Officer has issued WADs or the Contracting Officer has issued direction concerning continuation of activities.
- d. Work Authorization Directives. The WADs authorizing the Contractor to proceed with performance shall be provided to the Contractor by the Contracting Officer. Each WAD so issued will include as a minimum the following:
 - (1) Authorization number and effective date;
 - (2) Description of work;
 - (3) Applicable paragraph reference to the SOW;
 - (4) Estimated cost (and estimated cost for the work to be performed under this authorization if the WAD performance schedule exceeds the current contract);
 - (5) Appropriate performance objectives, schedule, and milestone dates;
 - (6) Cost, schedule, and all other reporting requirements;
 - (7) Date of issue;
 - (8) Contractor's signature;
 - (9) Contracting Officer's signature.
- e. Technical Direction. Government direction of the performance of all work authorized for performance under this Contract shall be in accordance with the Section I, Contract Clause, DEAR 952.242-70, entitled "Technical Direction."
- f. Modification of Work Authorization Directives. The Contracting Officer may at any time and without notice issue changes to the WADs within the SOW of the Contract requiring additional work, or directing the omission of, or changes to the work. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (b) of this clause shall be submitted by the Contractor in accordance with paragraphs (a) and (b) of this clause. In

addition, the Contractor shall notify the Contracting Officer immediately whenever the cost incurred to date plus the projected cost to complete the work on any WAD is expected to exceed or underrun the estimated cost by ten percent of the WAD. In this case, the Contractor shall submit a proposal for a change in the WAD in accordance with paragraphs (a) and (b) of this clause.

- g. Expenditure of Funds and Incurrence of Cost. The performance of work and the incurrence of cost in the execution of the SOW of this Contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the provisions of the Section I, Contract Clause, DEAR 970.5232-4, entitled "Obligation of Funds."
- h. Order of Precedence. This clause is of lesser order of precedence than the Section I, Contract Clauses, DEAR 970.5232-4, entitled, "Obligation of Funds"; and DEAR 970.5232-2, entitled, "Payments and Advances." The Contractor is not authorized to incur costs on any WAD which is not in compliance with the other terms and conditions of this Contract.
- i. In the event there is a conflict between the requirements of this subsection and Section J, Appendix E, "List of Applicable Directives," as amended, the Contractor shall obtain guidance from the Contracting Officer.
- j. Responsibility to achieve Environment, Safety, Health, and Security Compliance. Notwithstanding the other provisions of this subsection, the Contractor has, in the event of an emergency, authority to take corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraph (a) and (b) of this subsection.

H.52 WORKERS' COMPENSATION INSURANCE

- (a) The Contractor shall maintain workers' compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the Contracting Officer and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.

- (b) The Contractor shall obtain a service-type insurance policy that endorses the Department of Energy Incurred Loss Retrospective Rating Insurance Plan unless a different arrangement is approved by the Contracting Officer.
- (c) The Contractor shall submit to the Contracting Officer an annual evaluation and analysis of workers' compensation cost as a percent of payroll in comparison with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the Contracting Officer. The Contractor's self evaluation shall discuss:
 - Periodic audits of claims servicing units; and,
 - The reasonableness of self-insurance reserves and methods and assumptions used to closeout claims or losses to present value.
- (d) The Contractor, if it is a state institution covered under a corporate workers' compensation arrangement, shall provide the Contracting Officer with a copy of the account statements including deposits, earnings, payments, losses, and administrative fees by the Contractor's financial institution on no less than an annual basis.
- (e) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

H.53 WORKFORCE TRANSITION / ALTERNATE I

INCUMBENT EMPLOYEES HIRING PREFERENCES

The Contractor shall use the transition period to make hiring decisions and to establish the management structures necessary to conduct an employee relations program. In establishing an initial workforce, and through the first six months after Contract award, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions under this Contract to Incumbent Employees as defined in Clause H.21 who meet the qualifications for a particular position. This hiring preference takes priority over the hiring preference provided in the Section I clause entitled DEAR 952.226-74 Displaced Employee Hiring Preference. It does not apply to the Contractor's hiring of management staff (i.e., first line supervisors and above).

H.54 EMPLOYEE CONCERNS PROGRAM (ECP) OR THE OCRWM CONCERNS PROGRAM (OCP) EXIT INTERVIEWS

OCRWM contractors regardless of the performer of the work shall establish a method to inform separating employees concurrently with the employee's

checkout process, of their responsibility to exit with their Employee Concerns Program (ECP) or the OCRWM Concerns Program (OCP). Terminating employees shall have an exit interview and signatory verification will be required to complete the employee's checkout process. Verifiable records of such action shall be maintained by the contractor.

PART II – CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

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SECTION I

CONTRACT CLAUSES

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SECTION I

CONTRACT CLAUSES

I.1 52.202-1 DEFINITIONS (JUL 2004)

- (a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless--
 - (1) The solicitation, or amended solicitation, provides a different definition;
 - (2) The contracting parties agree to a different definition;
 - (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
 - (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.
- (b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

I.2 52.203-3 GRATUITIES (APR 1984)

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

- (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I.3 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

- (b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

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

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

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

I.4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)

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

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

- (a) *Definitions.*

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

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

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

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

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

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

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

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

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

- (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
- (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

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

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may -
 - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (2) Rescind the contract with respect to which -
 - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either -
 - (A) Exchanging the information covered by such subsections for anything of value; or
 - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

- (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

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

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be -
 - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;
 - (3) For cost-plus-award-fee contracts -
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may -

- (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
 - (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

I.8 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

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

“Agency” means “executive agency” as defined in Federal Acquisition Regulation (FAR) 2.101.

“Covered Federal action” means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

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

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

“Officer or employee of an agency” includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

“Reasonable payment” means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and *are* permitted by other Federal law.

“Regularly employed” means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State” means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

- (b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.
- (1) The term *appropriated funds* does not include profit or fee from a covered Federal action.
 - (2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

- (c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:
- (1) *Agency and legislative liaison by Contractor employees.*
- (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—
 - (A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or
 - (B) The application or adaptation of the person's products or services for an agency's use.
 - (iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

- (2) *Professional and technical services.*
- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
 - (iii) As used in paragraph (c)(2) of this clause, “professional and technical services” are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).
 - (iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.*

- (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.
- (2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties.*

- (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

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

(g) *Subcontracts.*

- (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.
- (2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
- (3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

I.9 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008)

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

"Agent" means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

"Full cooperation" --(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

- (2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require--
 - (i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

or

- (ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and
- (3) Does not restrict a Contractor from--
- (i) Conducting an internal investigation; or
 - (ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

"United States" means the 50 States, the District of Columbia, and outlying areas.

- (b) Code of business ethics and conduct. (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall--
- (i) Have a written code of business ethics and conduct;
 - (ii) Make a copy of the code available to each employee engaged in performance of the contract.
- (2) The Contractor shall--
- (i) Exercise due diligence to prevent and detect criminal conduct; and
 - (ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

- (3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed--
- (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
- (B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).
- (ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.
- (iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.
- (c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

- (1) An ongoing business ethics awareness and compliance program.
 - (i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.
 - (ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.
- (2) An internal control system.
 - (i) The Contractor's internal control system shall--
 - (A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and
 - (B) Ensure corrective measures are promptly instituted and carried out.
 - (ii) At a minimum, the Contractor's internal control system shall provide for the following:
 - (A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.
 - (B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.
 - (C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including--

- (1) Monitoring and auditing to detect criminal conduct;
 - (2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and
 - (3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.
- (D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.
- (E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.
- (F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).
- (1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

- (2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.
 - (3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.
 - (4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.
- (G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.
- (d) Subcontracts. (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.
- (2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

I.10 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

- (a) *Definition.*

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

- (b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

- (1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—
 - (i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
 - (ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.
- (2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.
- (3) Any required posters may be obtained as follows:

<i>Poster(s)</i>	<i>Obtain from</i>
U.S. Department of Energy	
Office of Inspector General www.ig.energy.gov/documents/Hotline_Poster.pdf	
<i>(Contracting Officer shall insert—</i>	

 - (i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and
 - (ii) The website(s) or other contact information for obtaining the poster(s).
- (c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.
- (d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

- (1) Is for the acquisition of a commercial item; or
- (2) Is performed entirely outside the United States.

I.11 52.204-1 APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of the Department of Energy Senior Procurement Executive (MA-60) and shall not be binding until so approved.

I.12 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

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

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as -

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as -

- (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.
- (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.
- (c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

I.13 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

- (a) *Definition.* “Women-owned business concern,” as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

- (b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR [52.219-1](#), *Small Business Program Representations*, of this solicitation.] The offeror represents that it ___ is a women-owned business concern.

I.14 52.204-7 CENTRAL CONTRACTOR REGISTRATION (JUL 2006)

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

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

Registered in the CCR database means that--

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
 - (2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record ``Active". The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.
- (b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

- (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
- (c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
- (1) An offeror may obtain a DUNS number--
 - (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.
 - (2) The offeror should be prepared to provide the following information:
 - (i) Company legal business.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company Physical Street Address, City, State, and Zip Code.
 - (iv) Company Mailing Address, City, State and Zip Code (if separate from physical).
 - (v) Company Telephone Number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).

- (x) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (g)
 - (1)
 - (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.
 - (ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment"

paragraph of the electronic funds transfer (EFT) clause of this contract.

- (2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.
- (h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

I.15 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEPT 2007)

- (a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
- (b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

I.16 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR [9.404](#) for information on the Excluded Parties List System). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
 - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

I.17 52.211-5 MATERIAL REQUIREMENTS (AUG 2000)

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

“New” means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

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

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials

and by-products generated from, and commonly reused within, an original manufacturing process.

“Remanufactured” means factory rebuilt to original specifications.

“Virgin material” means -

- (1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
 - (2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.
- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

I.18 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

I.19 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

- (a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either -
 - (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or
 - (2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data - Modifications.

I.20 52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997)

- (a) The requirements of paragraphs (b) and (c) of this clause shall -
 - (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
 - (2) Be limited to such modifications.
- (b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at

FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

- (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

1.21 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

1.22 52.217-5 EVALUATION OF OPTIONS (JULY 1990)

Except when it is determined in accordance with FAR [17.206\(b\)](#) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

1.23 52.219-4 NOTICE OF PRICE EVALUATION FOR HUBZONE SMALL BUSINESS CONCERNS (JUL 2005)

- (a) *Definition.* HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- (b) *Evaluation preference.*
 - (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—
 - (i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and
 - (ii) Otherwise successful offers from small business concerns.

- (2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.
 - (3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.
- (c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

___ Offer elects to waive the evaluation preference.

- (d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for
- (1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;
 - (2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;
 - (3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or
 - (4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

- (e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants;
- (f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

I.24 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (c) *Definitions.* As used in this contract -

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern” -

- (1) Means a small business concern -
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly

owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that -

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

“Veteran-owned small business concern” means a small business concern -

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern

-

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
 - (2) Whose management and daily business operations are controlled by one or more women.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

**I.25 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2007)
ALTERNATE II (OCT 2001)**

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

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

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

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

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

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

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

- (c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a

subcontracting plan shall make the offeror ineligible for award of a contract.

- (d) The offeror's subcontracting plan shall include the following:
- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):
 - (i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
 - (ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.
 - (A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.
 - (B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to

various Contractors cannot exceed the total value of the subcontract.

- (C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
- (D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

- (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
- (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
- (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

- (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—
- (i) Small business concerns;
 - (ii) Veteran-owned small business concerns;
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns; and
 - (vi) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
 - (i) Small business concerns (including ANC and Indian tribes);
 - (ii) Veteran-owned small business concerns;
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
 - (vi) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror’s subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

- (10) Assurances that the offeror will—
- (i) Cooperate in any studies or surveys as may be required;
 - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
 - (iii) Submit [Standard Form \(SF\) 294](#), Subcontracting Report for Individual Contracts, and/or [SF 295](#), Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
 - (iv) Ensure that its subcontractors agree to submit [SF 294](#) and [SF 295](#).
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (*e.g.*, PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone

small business, small disadvantaged business, and women-owned small business concerns.

- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
- (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—
 - (A) Whether small business concerns were solicited and, if not, why not;
 - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
 - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
 - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
 - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
 - (G) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact—
 - (A) Trade associations;
 - (B) Business development organizations;

- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
 - (D) Veterans service organizations.
 - (v) Records of internal guidance and encouragement provided to buyers through—
 - (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program’s requirements.
 - (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

- (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.
 - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor’s subcontracting plan.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—
- (1) The master plan has been approved;
 - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
 - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
- (i) The failure of the Contractor or subcontractor to comply in good faith with—
 - (1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or
 - (2) An approved plan required by this clause, shall be a material breach of the contract.
- (j) The Contractor shall submit the following reports:
 - (1) [Standard Form 294](#), *Subcontracting Report for Individual Contracts*. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.
 - (2) [Standard Form 295](#), *Summary Subcontract Report*. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American

Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

**I.26 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN
(JAN 1999)**

- (a) “Failure to make a good faith effort to comply with the subcontracting plan”, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled “Small Business Subcontracting Plan,” or willful or intentional action to frustrate the plan.
- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled “Small Business Subcontracting Plan,” the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this

clause on behalf of all agencies with contracts covered by the commercial plan.

- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

I.27 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-DISADVANTAGED STATUS AND REPORTING (OCT 1999)

- (a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.
- (b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

I.28 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the

Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

I.29 52.222-3 CONVICT LABOR (JUN 2003)

- (a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons--
 - (1) On parole or probation to work at paid employment during the term of their sentence;
 - (2) Who have been pardoned or who have served their terms; or
 - (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--
 - (i) The worker is paid or is in an approved work training program on a voluntary basis;
 - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
 - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
 - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

I.30 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 2005)

- (a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) *Payrolls and basic records.*
 - (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
 - (2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor

also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

- (e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

I.31 52.222-6 DAVIS-BACON ACT (JULY 2005)

- (a) Definition.—“Site of the work”—
 - (1) Means—
 - (i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and
 - (ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—
 - (A) Located in the United States; and
 - (B) Established specifically for the performance of the contract or project;
 - (2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—
 - (i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and
 - (ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the

“secondary site of the work” as defined in paragraph
(a)(1)(ii) of this definition;

- (3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.
- (b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

- (2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
 - (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
 - (4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.
- (c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

- (ii) The classification is utilized in the area by the construction industry.
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

I.32 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

I.33 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional [Form WH-347](#) (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the—

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

- (2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—
 - (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional [Form WH-347](#) shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (b)(2) of this clause.
- (4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

I. 34 52.222-9 APPRENTICES AND TRAINEES (JULY 2005)

- (a) Apprentices.
 - (1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—
 - (i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
 - (ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
 - (2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

- (3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
 - (4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.
 - (5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
 - (6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (b) Trainees.
- (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed

unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

- (2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.
 - (3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**I. 35 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS
(FEB 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

I.36 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)

- (a) *Definition.* “Construction, alteration or repair,” as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
 - (2) Painting and decorating;
 - (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
 - (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of work” definition; and
 - (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).
- (b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—
- (1) Davis-Bacon Act;

- (2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this contract);
 - (3) Apprentices and Trainees;
 - (4) Payrolls and Basic Records;
 - (5) Compliance with Copeland Act Requirements;
 - (6) Withholding of Funds;
 - (7) Subcontracts (Labor Standards);
 - (8) Contract Termination—Debarment;
 - (9) Disputes Concerning Labor Standards;
 - (10) Compliance with Davis-Bacon and Related Act Regulations; and
 - (11) Certification of Eligibility.
- (c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- (d) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

- (e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

I.37 52.222-12 CONTRACT TERMINATION—DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

I.38 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

I.39 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.40 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

I.41 52.222-16 APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

I. 42 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

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

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

I.43 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex,

or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

I.44 RESERVED

I.45 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that—

- (a) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It has, has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

I.46 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The offeror represents that—

- (a) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

- (b) It X has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

I.47 52.222-26 EQUAL OPPORTUNITY (APR 2002)

- (a) *Definition.* “United States,” as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b)
 - (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
 - (2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-1.5).
- (c)
 - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
 - (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—
 - (i) Employment;

- (ii) Upgrading;
 - (iii) Demotion;
 - (iv) Transfer;
 - (v) Recruitment or recruitment advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The

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

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

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

- (d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

I.48 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

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

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

“Executive and top Management” means any employee—

- (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
- (4) Who customarily and regularly exercises discretionary powers; and
- (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

“Other eligible veteran” means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

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

“Qualified special disabled veteran” means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

“Special disabled veteran” means—

- (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability--
 - (i) Rated at 30 percent or more; or
 - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran’s ability to prepare for, obtain, or retain employment consistent with the veteran’s abilities, aptitudes, and interests); or
- (2) A person who was discharged or released from active duty because of a service-connected disability.

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

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—
 - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

- (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed---
 - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
 - (ii) Between August 5, 1964, and May 7, 1975, in all other cases.
- (b) *General.*
 - (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as --
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - (iii) Rate of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related

activities, and selection for leaves of absence to pursue training;

- (viii) Activities sponsored by the Contractor including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
- (c) *Listing openings.*
- (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs.
- Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
- (2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of

subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

- (d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.
- (e) *Postings.*
 - (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
 - (2) The employment notices shall--
 - (i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
 - (ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.
 - (3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheel chair).
 - (4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam Era, and other eligible veterans.
- (f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

- (g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

I.49 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

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

- (ix) Any other term, condition, or privilege of employment.
 - (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) *Postings.*
- (1) The Contractor agrees to post employment notices stating -
 - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
 - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
 - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

I.50 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2007)

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
 - (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
 - (3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.
- (b) The Contractor shall report the above items by completing the Form VETS-100, entitled “Federal Contractor Veterans’ Employment Report (VETS-100 Report).”
- (c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—
 - (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
 - (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

- (e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at [38 U.S.C. 4212](#) shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at [38 U.S.C. 4212](#) to identify themselves to the Contractor. The invitation shall state that—
 - (1) The information is voluntarily provided;
 - (2) The information will be kept confidential;
 - (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
 - (4) The information will be used only in accordance with the regulations promulgated under [38 U.S.C. 4212](#).
- (f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

I.51 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009)

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

"Coercion" means--

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Debt bondage" means the status or condition of a debtor arising from a

pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

"Forced Labor" means knowingly providing or obtaining the labor or services of a person--

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of--

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

"Severe forms of trafficking in persons" means--

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation,

provision, or obtaining of a person for the purpose of a commercial sex act.

- (b) Policy. The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not--
 - (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
 - (2) Procure commercial sex acts during the period of performance of the contract; or
 - (3) Use forced labor in the performance of the contract.
- (c) Contractor requirements. The Contractor shall--
 - (1) Notify its employees of--
 - (i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and
 - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
 - (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.
- (d) Notification. The Contractor shall inform the Contracting Officer immediately of--
 - (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
 - (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.
- (e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in--

- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
 - (2) Requiring the Contractor to terminate a subcontract;
 - (3) Suspension of contract payments;
 - (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
 - (5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
 - (6) Suspension or debarment.
- (f) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.
- (g) Mitigating Factor. The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

I.52 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) - ALTERNATE I (JUL 1995)

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

MATERIAL

(If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to -
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

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

**I.53 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW
INFORMATION (AUG 2003) -- ALTERNATE I (AUG 2003)**

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

“Priority chemical” means a chemical identified by the Interagency
Environmental Leadership Workgroup or, alternatively, by an agency
pursuant to section 503 of Executive Order 13148 of April 21, 2000,
Greening the Government through Leadership in Environmental
Management.

“Toxic chemical” means a chemical or chemical category listed in 40 CFR
372.65.

- (b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (c) The Contractor shall provide all information needed by the Federal facility to comply with the following:
 - (1) The emergency planning reporting requirements of section 302 of EPCRA.
 - (2) The emergency notice requirements of section 304 of EPCRA.
 - (3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.
 - (4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.
 - (5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.
 - (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148.
 - (7) The environmental management system as described in section 401 of E.O. 13148.

I.54 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

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

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act ([21 U.S.C. 812](#)) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

- (b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about—
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor’s policy of maintaining a drug-free workplace;

- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—
- (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

Taking appropriate personnel action against such employee, up to and including termination; or

- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

- (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR [23.506](#), render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

I.55 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

- (a) The Contractor shall notify the Contracting Officer or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).
- (b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall -
 - (1) Be submitted in writing;
 - (2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

- (3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.
- (c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.
- (d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

I.56 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)

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

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

- (b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR part 247).

I.57 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)

- (a) Definition. “Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as--

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
 - (2) Class II, including, but not limited to, hydrochlorofluorocarbons.
- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

**I.58 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS
(MAY 1995)**

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

**I.59 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE
REPORTING (Aug 2003)**

- (a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.
- (b) By signing this offer, the offeror certifies that—
 - (1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) ([42 U.S.C. 11023](#)) and section 6607 of the Pollution Prevention Act of 1990 (PPA) ([42 U.S.C. 13106](#)), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

- (2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: [*Check each block that is applicable.*]
- (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
 - (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, [42 U.S.C. 11023\(b\)\(1\)\(A\)](#);
 - (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, [42 U.S.C. 11023\(f\)](#) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
 - (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
 - (A) Major group code 10 (except 1011, 1081, and 1094).
 - (B) Major group code 12 (except 1241).
 - (C) Major group codes 20 through 39.
 - (D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
 - (E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C ([42 U.S.C. 6921](#), *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
 - (v) The facility is not located in the United States or its outlying areas.

I.60 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

- (b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--
 - (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

 - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

 - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

 - (4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
 - (i) Major group code 10 (except 1011, 1081, and 1094).
 - (ii) Major group code 12 (except 1241).
 - (iii) Major group codes 20 through 39.
 - (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

- (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
- (5) The facility is not located in the United States or its outlying areas.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt -
 - (1) The Contractor shall notify the Contracting Officer; and
 - (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall -
 - (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
 - (ii) Continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall -
 - (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
 - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

I.61 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007)

- (a) *Definition.* As used in this clause—

“Energy-efficient product”—

- (1) Means a product that—
 - (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
 - (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.
 - (2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions ([42 U.S.C. 8259b](#)).
- (b) The Contractor shall ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—
- (1) Delivered;
 - (2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
 - (3) Furnished by the Contractor for use by the Government; or
 - (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
- (c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—
- (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
 - (2) Otherwise approved in writing by the Contracting Officer.
- (d) Information about these products is available for—
- (1) ENERGY STAR® at <http://www.energystar.gov/products>; and
 - (2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

I.62 52.223-16 IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007) ALTERNATE I (DEC 2007)

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

“Computer monitor” means a video display unit used with a computer.

“Desktop computer” means a computer designed for use on a desk or table.

“Notebook computer” means a portable-style or laptop-style computer system.

“Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Silver registered or higher. Silver is the second level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see www.epeat.net.

I.63 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

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

I.64 52.224-2 PRIVACY ACT (APR 1984)

- (a) The Contractor agrees to -
 - (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies -
 - (i) The systems of records; and
 - (ii) The design, development, or operation work that the contractor is to perform;
 - (2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
 - (3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.
- (b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.
- (c)
 - (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
 - (2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number,

symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

- (3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

I.65 52.225-1 BUY AMERICAN ACT - SUPPLIES (FEB 2009)

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

"Commercially available off-the-shelf (COTS)" item--

- (1) Means any item of supply (including construction material) that is-
- (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means -

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of

components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means--

- (1) An unmanufactured end product mined or produced in the United States;
- (2) An end product manufactured in the United States, if--
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
 - (ii) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States, the District of Columbia, and outlying areas.

- (b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item (See 12.505(a)(1)).
- (c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.
- (d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act - Certificate."

I.66 52.225-2 BUY AMERICAN ACT CERTIFICATE (JUNE 2003)

- (a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that the

offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(b) Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of [Part 25](#) of the Federal Acquisition Regulation.

I.67 52.225-11 BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2009)

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

"Caribbean Basin country construction material" means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item" --

- (1) Means any item of supply (including construction material) that is-
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

- (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means -

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany,

Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means--

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if--
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - (ii) The construction material is a COTS item.

"Foreign construction material" means a construction material other than a domestic construction material.

"Free Trade Agreement country construction material" means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

"Least developed country construction material" means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"United States" means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
 - (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.
- (b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are

waived for designated county construction materials.

- (2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that -
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act.*
(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including -

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;

- (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
 - (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIAL PRICE COMPARISON

Construction Material Description	Unit of	Quantity Measure	Price (dollars)\1\
Item 1 :			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

\1\Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

**I.68 52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT—
 CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
 (JAN 2005)**

- (a) *Definitions.* “Construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause [52.225-11](#)).
- (b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-11](#) in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.
- (c) Evaluation of offers.

- (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause [52.225-11](#).
 - (2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.
- (d) Alternate offers.
- (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-11](#), the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.
 - (2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-11](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
 - (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-11](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

I.69 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006)

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

I.70 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

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

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

“Interested party” means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

- (b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.
 - (1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the -

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and
Grants Administration
1849 C Street, NW,
MS-2626-MIB
Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

- (2) The Contractor may request an adjustment under the Indian Incentive Program to the following:
 - (i) The estimated cost of a cost-type contract.
 - (ii) The target cost of a cost-plus-incentive-fee prime contract.
 - (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
 - (iv) The price of a firm-fixed-price prime contract.
 - (3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.
 - (4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.
- (c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

**I.71 52.227-10 FILING OF PATENT APPLICATIONS - CLASSIFIED
SUBJECT MATTER (DEC 2007)**

- (a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified “Secret” or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of [35 U.S.C. 181-188](#), or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

- (b) Before filing a patent application in the United States disclosing any subject matter of this contract classified “Confidential,” the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.
- (c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.
- (d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.
- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that cover or are likely to cover classified subject matter.

I.72 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages N/A it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the “Rights in Data - General” clause contained in this contract) in and to the technical data contained in the proposal dated July 24, 2008, upon which this contract is based.

I.73 52.229-8 TAXES - FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

- (a) Any tax or duty from which the United States Government is exempt by agreement with the Government of [*insert name of the foreign government*], or from which the Contractor or any subcontractor under this

contract is exempt under the laws of [*insert name of country*], shall not constitute an allowable cost under this contract.

- (b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

I.74 52.230-2 COST ACCOUNTING STANDARDS (OCT 2008)

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

price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

- (4)
 - (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.
 - (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
 - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
 - (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.
- (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the

Contract Disputes Act (41 U.S.C. 601).

- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$650,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

**I.75 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS
(MAR 2008)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

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

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

- (1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or
- (2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

“Cognizant Federal agency official (CFAO)” means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

“Desirable change” means a compliant change to a Contractor’s established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

“Fixed-price contracts and subcontracts” means—

- (1) Fixed-price contracts and subcontracts described at FAR [16.202](#), [16.203](#), (except when price adjustments are based on actual costs of labor or material, described at [16.203-1\(a\)\(2\)](#)), and [16.207](#);
- (2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR [Subpart 16.4](#));
- (3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR [Subpart 16.5](#)); and
- (4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR [Subpart 16.6](#)).

“Flexibly-priced contracts and subcontracts” means—

- (1) Fixed-price contracts and subcontracts described at FAR [16.203-1\(a\)\(2\)](#), [16.204](#), [16.205](#), and [16.206](#);
- (2) Cost-reimbursement contracts and subcontracts (FAR [Subpart 16.3](#));
- (3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR [Subpart 16.4](#));
- (4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR [Subpart 16.5](#)); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR [Subpart 16.6](#)).

“Noncompliance” means a failure in estimating, accumulating, or reporting costs to—

- (1) Comply with applicable CAS; or
- (2) Consistently follow disclosed or established cost accounting practices.

“Required change” means—

- (1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or
- (2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

“Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

- (b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR [52.230-2](#), Cost Accounting Standards; paragraph (a)(4) of the clause at FAR [52.230-3](#), Disclosure and Consistency of Cost Accounting Practices; or paragraph

(a)(2) of the clause at FAR [52.230-5](#), Cost Accounting Standards—
Educational Institution.

- (1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.
- (2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR [52.230-2](#); or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR [52.230-5](#); submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.
- (3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR [52.230-2](#) and FAR [52.230-5](#); or with paragraph (a)(3) of the clause at FAR [52.230-3](#), submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.
- (4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR [52.230-2](#) and FAR [52.230-5](#); or by paragraph (a)(4) of the clause at FAR [52.230-3](#))—
 - (i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or
 - (ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

- (c) When requested by the CFAO, submit on or before a date specified by the CFAO—
- (1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;
 - (2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;
 - (3) For any request for a desirable change that is based on the criteria in FAR [30.603-2](#)(b)(3)(ii), the data necessary to demonstrate the required cost savings; and
 - (4) For any request for a desirable change that is based on criteria other than that in FAR [30.603-2](#)(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.
- (d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—
- (1) Calculate the cost impact in accordance with paragraph (f) of this clause;
 - (2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:
 - (i) A representative sample of affected CAS-covered contracts and subcontracts.
 - (ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts.

- (iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;
- (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:
 - (i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts.
 - (ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts; and
- (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.
- (e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—
 - (1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;
 - (2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

- (i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and
 - (ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;
 - (3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and
 - (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.
- (f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:
- (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).
 - (2) For unilateral changes—
 - (i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
 - (A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.
 - (B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

- (ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:
 - (A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.
 - (B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
 - (iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and
 - (iv) Calculate the increased cost to the Government in the aggregate.
- (3) For equitable adjustments for required or desirable changes—
- (i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and
 - (ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.
- (g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

- (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
- (2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:
 - (i) A representative sample of affected CAS-covered contracts and subcontracts.
 - (ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.
 - (iii) Any other method that provides a reasonable approximation of the total increase or decrease.
- (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:
 - (i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts.
 - (ii) The increased or decreased cost to the Government for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts.
 - (iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

- (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:
- (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
 - (2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—
 - (i) Include only those affected CAS-covered contracts and subcontracts having—
 - (A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and
 - (B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and
 - (ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.
 - (3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.
 - (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

- (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).
- (2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:
 - (i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.
 - (ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.
- (3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
 - (i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.
 - (ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

- (4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.
 - (5) Calculate the increased cost to the Government in the aggregate.
- (j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:
- (1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.
 - (2) Issue a final decision in accordance with FAR [33.211](#) and unilaterally adjust the contract(s) by the estimated amount of the cost impact.
- (k) Agree to—
- (1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR [52.230-2](#) and [52.230-5](#); or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR [52.230-3](#); and
 - (2) Repay the Government for any aggregate increased cost paid to the Contractor.
- (l) For all subcontracts subject to the clauses at FAR [52.230-2](#), [52.230-3](#), or [52.230-5](#)—
- (1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

- (2) Include the substance of this clause in all negotiated subcontracts;
and
- (3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:
 - (i) Subcontractor's name and subcontract number.
 - (ii) Dollar amount and date of award.
 - (iii) Name of Contractor making the award.
- (m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—
 - (1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and
 - (2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.
- (n) For subcontracts containing the clause or substance of the clause at FAR [52.230-2](#), FAR [52.230-3](#), or FAR [52.230-5](#), require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

I.76 52.232-17 INTEREST (JUN 1996)

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the

amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

- (b) Amounts shall be due at the earliest of the following dates:
 - (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
 - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I.77 52.232-18 AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

I.78 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986)

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

**I.79 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—
CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**

- (a) Method of payment.
 - (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in

paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.

- (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).
- (b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.
- (c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.
- (d) *Suspension of payment.* If the Contractor’s EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
- (e) *Liability for uncompleted or erroneous transfers.*
 - (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor’s EFT information incorrectly, the Government remains responsible for—
 - (i) Making a correct payment;
 - (ii) Paying any prompt payment penalty due; and
 - (iii) Recovering any erroneously directed funds.

- (2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—
- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.
- (f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to [Subpart 32.8](#), is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.
- (i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for

transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

I.80 52.233-1 DISPUTES (JUL 2002) - ALTERNATE I (DEC 1991)

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d)
 - (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
 - (2)
 - (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
 - (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

- (iii) The certification shall state as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.”
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

I.81 52.233-2 SERVICE OF PROTEST (SEPT 2006)

- (a) Protests, as defined in section [31.101](#) of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Marc T. McCusker
Contracting Officer
U.S. Department of Energy
Office of Civilian Radioactive Waste Management
Office of Project Management and Procurement
1551 Hillshire Dr.
Las Vegas, NV 89134-6321

- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

I.82 52.233-3 PROTEST AFTER AWARD (AUG 1996) - ALTERNATE I (JUN 1985)

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

other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if -

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

I.83 52.233-4 – APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

I.84 52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully

adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

I.85 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

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

I.86 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

- (a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to -
 - (1) Furnish phase-in training; and
 - (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to

the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.87 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

- (a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.
- (b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.
- (c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

I.88 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

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

I.89 52.242-13 BANKRUPTCY (JUL 1995)

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

I.90 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

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

I.91 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2009)

- (a) Definitions. As used in this clause--
 - "Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.
 - "Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
 - (i) 52.203-13, Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1

(41 U.S.C. 251 note).

- (ii) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (iii) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
 - (iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212(a)).
 - (v) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
 - (vi) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).
 - (vii) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
 - (viii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.92 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that

the commercial shipping documents are annotated with either of the following notations, as appropriate:

- (a) If the Government is shown as the consignor or the consignee, the annotation shall be:

Transportation is for the [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

- (b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No.[]. This may be confirmed by contacting [*Name and address of the contract administration office listed in the contract*].

I.93 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)

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

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- (c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- (d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

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

(End of statement)

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

I.94 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)

- (a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are -
 - (1) Acquired for a U.S. Government agency account;
 - (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
 - (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- (b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both -
- (i) The Contracting Officer, and
 - (ii) The:

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

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

- (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
- (A) Sponsoring U.S. Government agency.
 - (B) Name of vessel.
 - (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.

- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).
- (e) The requirement in paragraph (a) does not apply to -
 - (1) Cargoes carried in vessels as required or authorized by law or treaty;
 - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
 - (4) Subcontracts or purchase orders for the acquisition of commercial items unless--
 - (i) This contract is--
 - (A) A contract or agreement for ocean transportation services; or
 - (B) A construction contract; or
 - (ii) The supplies being transported are--
 - (A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
 - (B) Shipped in direct support of U.S. military--
 - (1) Contingency operations;
 - (2) Exercises; or

- (3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration

400 Seventh Street, SW
Washington DC 20590

Phone: (202) 366-4610.

**I.95 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR
AUDIT (FEB 2006)**

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid--
 - (1) By the Contractor under a cost-reimbursement contract; and
 - (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (c) Contractors shall submit the above referenced transportation documents to--

[To be filled in by Contracting Officer]

**I.96 52.249-6 TERMINATION (COST-REIMBURSEMENT) (MAY 2004);
MODIFIED BY DEAR 970.4905-1 (DEC 2000)**

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if --

- (1) The Contracting Officer determines that a termination is in the Government's interest; or
 - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

- (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government --
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items

authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
 - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.
 - (3) The reasonable costs of settlement of the work terminated, including--

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
- (4) A portion of the fee payable under the contract, determined as follows:
- (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
 - (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as supplemented in Subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
 - (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under

paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor --

- (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
 - (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted --
- (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

I.97 52.249-14 EXCUSABLE DELAYS (APR 1984)

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -
 - (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
 - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

I.98 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

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

Property,” except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

I.99 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

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

I.100 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.
- (b) The use in this solicitation or contract of any [insert regulation name] (48 CFR []) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

I.101 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

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

**I.102 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR
EMPLOYEES (DEC 2000)**

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

I.103 952.204-2 SECURITY (MAY 2002)

- (a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified

or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

- (e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)
- (j) Foreign Ownership, Control or Influence.
 - (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or

the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.

- (2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
- (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.
- (4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.
- (5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.104 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

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

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

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

I.105 952.204-75 PUBLIC AFFAIRS (DEC 2000)

- (a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.
- (b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
- (c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.
- (d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.
- (e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.
- (f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.
- (g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in

funding programs and projects resulting in scientific, technical, and other achievements.

I.106 952.204-77 COMPUTER SECURITY (AUG 2006)

- (a) Definitions.
 - (1) Computer means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.
 - (2) Individual means a DOE contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.
- (b) Access to DOE computers. A contractor shall not allow an individual to have access to information on a DOE computer unless:
 - (1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and,
 - (2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.
- (c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.
- (d) Written records. The contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.
- (e) Subcontracts. The contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

I.107 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

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

**I.108 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)
(ALTERNATE I) (JUN 1997)**

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

from competing for follow-on contracts for advisory and assistance services.

- (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.
 - (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.
- (2) Access to and use of information.
- (i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not:
 - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
 - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

- (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
 - (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
 - (iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
 - (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.
- (f) Subcontracts.
 - (1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms “contract,” “Contractor,” and “Contracting Officer” shall be appropriately modified to preserve the Government’s rights.
 - (2) Prior to the award under this contract of any subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

I.109 952.211-70 PRIORITIES AND ALLOCATIONS FOR ENERGY PROGRAMS (ATOMIC ENERGY) (JUN 1996)

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed to fill this contract.

I.110 952.211-71 PRIORITIES AND ALLOCATIONS FOR ENERGY PROGRAMS (DOMESTIC ENERGY SUPPLIES) (ALTERNATE I) (JUN 1996)

- (a) This contract may be eligible for priorities and allocations support, as provided for by section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 et seq.) if its purpose is determined to be to maximize domestic energy supplies. Eligibility is dependent on an executive

decision on a case-by-case basis with the decision being jointly made by the Departments of Energy and Commerce.

- (b) DOE regulations regarding material allocations and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).
- (c) Additional guidance is provided by DOE Publication MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985, as it may from time to time be revised.

Copies may be obtained by written request to: Department of Energy, Office of Scientific and Technical Information (OSTI), Post Office Box 62, Oak Ridge, Tennessee 37830.

I.111 952.215-70 KEY PERSONNEL (DEC 2000)

- (a) The personnel listed below or elsewhere in this contract (Section J, Appendix D) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

(See Section J, Appendix D)

I.112 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

- (a) Notwithstanding any other provision of the contract, the prior approval of the contracting officer shall be obtained when, in performance of this

contract, the contractor acquires or proposes to acquire use of real property by:

- (1) Purchase, on the Government's behalf or in the contractor's own name, with title eventually vesting in the Government.
 - (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
 - (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the contracting officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.113 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

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

I.114 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The contractor shall request the required OMB clearance from the

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

I.115 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

(a) Definition.

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

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

I.116 952.242-70 TECHNICAL DIRECTION (DEC 2000)

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

- (1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

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

- (1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
 - (2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or
 - (3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR. *81009
- (f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

I.117 952.247-70 FOREIGN TRAVEL (DEC 2000)

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.

I.118 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005)

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

as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) *Waiver of Defenses.* In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through

whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

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

- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) *Notification and litigation of claims.* The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder;

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

- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) *Civil penalties.* The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.
- (j) *Criminal penalties.* Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) *Inclusion in subcontracts.* The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC

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

Effective date

() See Note I below for instructions related to this section on Effective Date.

Relationship to general indemnity

() See Note I below for instructions related to this section on Relationship to General Indemnity.

Note I

- (a) For contracts with an award date after the effective date of Acquisition Letter 2005-15, October 4, 2005, do not include an effective date provision. Delete the title.
- (b) For contracts with an award date on or after August 8, 2005, but before the effective date of Acquisition Letter 2005-15, and containing the Nuclear Hazards Indemnity Agreement clause, dated June 1996 or prior version, replace the clause at DEAR 952.250-70 with this model clause and use the EFFECTIVE DATE title and language, as follows:

"(1) Effective Date. This contract was awarded on or after August 8, 2005 and at contract award contained the clause at DEAR 952.250-70 (JUNE 1996) or prior version. That clause has been deleted and replaced with this clause. The Price-Anderson Amendments Act of 2005, described by this clause, control the indemnity for any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for civil penalties for violations of the Atomic Energy Act of 1954 under this contract is described by paragraph (i) of this clause.

- (c) For those contracts awarded prior to August 8, 2005 and containing the Nuclear Hazards Indemnity Agreement clause, dated June 1996 or prior version, add this clause in addition to the clause at 952.250-70 or prior version and use the EFFECTIVE DATE title and language, as follows:

"(1) Effective Date. This contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The

Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

(End of note)

Note II

The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 950.7101. Caution: Be aware that for contracts that will have this provision added which do not contain an effective date provision, this paragraph shall be marked (1). In the event an Effective Date provision has been included, it shall be marked (m).

"() To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply."

(End of note)

**I.119 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS
(DEC 2000)**

- (a) The contractor shall take advantage of travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.
- (b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.
- (c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.
- (d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.
- (e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business.

Some car rental companies extend those discounts to Federal contractor employees.

- (f) Obtaining travel discounts.
 - (1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.
 - (2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT
CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

I.120 970.5203-1 MANAGEMENT CONTROLS (JUN 2007)

- (a) (1) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted including consideration of outsourcing of functions by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized

use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

- (2) The systems of controls employed by the contractor shall be documented and satisfactory to DOE.
 - (3) Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.
 - (4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed by the contracting officer, the contractor shall supply to the contracting officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 970.5232-3, Accounts, records, and inspection.
- (b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

I.121 970.5203-2 -- PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)

- (a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the

alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, outsourcing decisions, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

- (b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.
- (c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.
- (d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

I.122 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000)

- (a) Organization chart. As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.
- (b) Supervisory representative of contractor. Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.

- (c) Control of employees. The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the contracting officer may require, with the approval of the Secretary of Energy, the contractor to remove the employee from work under the contract. This includes the right to direct the contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.
- (d) Standards and procedures. The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

I.123 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)

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

I.124 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)

- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and

regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

- (b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."
- (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the

contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

- (d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

I.125 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.
- (b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. The contracting officer shall identify which of the following categories of records will be included in the clause.
 - (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.
 - (2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

- (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and
- (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
- (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The

Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.
- (g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
 - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
 - (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
 - (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.126 970.5208-1 PRINTING (DEC 2000)

- (a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "Printing" includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

I.127 970.5209-1 REQUIREMENT FOR GUARANTEE OF PERFORMANCE (DEC 2000)

The successful offeror is required by other provisions of this solicitation to organize a dedicated corporate entity to carry out the work under the contract to be awarded as a result of this solicitation. The successful offeror will be required, as part of the determination of responsibility of the newly organized, dedicated corporate entity and as a condition of the award of the contract to that entity, to furnish a guarantee of that entity's performance. That guarantee of performance must be satisfactory in all respects to the Department of Energy.

I.128 970.5211-1 WORK AUTHORIZATION (MAY 2007)

- (a) Work authorization proposal. Prior to the start of each fiscal year, the Contracting Officer or designee shall provide the contractor with program execution guidance in sufficient detail to enable the contractor to develop an estimated cost, scope, and schedule. In addition, the Contracting Officer may unilaterally assign work. The contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work it recommends be undertaken during that upcoming fiscal year.
- (b) Cost estimates. The contractor and the Contracting Officer shall establish a budget of estimated costs, description of work, and schedule of performance for each work assignment. If agreement cannot be reached as to scope, schedule, and estimated cost, the Contracting Officer may issue a unilateral work authorization, pursuant to this clause. The work authorization, whether issued bilaterally or unilaterally shall become part of the contract. No activities shall be authorized or costs incurred prior to Contracting Officer issuance of a work authorization or direction concerning continuation of activities of the contract.
- (c) Performance. The contractor shall perform work as specified in the work authorization, consistent with the terms and conditions of this contract.
- (d) Modification. The Contracting Officer may at any time, without notice, issue changes to work authorizations within the overall scope of the contract. A proposal for adjustment in estimated costs and schedule for

performance of work, recognizing work made unnecessary as a result, along with new work, shall be submitted by the contractor in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

- (e) Increase in estimated cost. The contractor shall notify the Contracting Officer immediately whenever the cost incurred, plus the projected cost to complete work is projected to differ (plus or minus) from the estimate by 10 percent. The contractor shall submit a proposal for modification in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.
- (f) Expenditure of funds and incurrence of costs. The expenditure of monies by the contractor in the performance of all authorized work shall be governed by the "Obligation of Funds" or equivalent clause of the contract.
- (g) Responsibility to achieve environment, safety, health, and security compliance. Notwithstanding other provisions of the contract, the contractor may, in the event of an emergency, take that corrective action necessary to sustain operations consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. If such action is taken, the contractor shall notify the Contracting Officer within 24 hours of initiation and, within 30 days, submit a proposal for adjustment in estimated costs and schedule established in accordance with paragraphs (a) and (b) of this clause.

I.129 970.5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000) (ALTERNATES II AND III) (DEC 2000)

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

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

(c) *Determination of Total Available Fee Amount Earned.*

- (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.
- (2) The DOE Operations/Field Office Manager, or designee, will be the Head of Contracting Activity for the DOE Office of Civilian Radioactive Waste Management. The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the Head of Contracting Activity, or designee.
- (3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.

- (4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (d) *Performance Evaluation and Measurement Plan(s)*. To the extent not set forth elsewhere in the contract:
- (1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:
 - (i) prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or
 - (ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the contracting officer.
 - (2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.
 - (3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The contracting officer shall notify the contractor:
 - (i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;
 - (ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or

- (iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.

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

- (f) *Contractor self-assessment.* Following each evaluation period, the Contractor shall submit a self-assessment within 45 calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

I.130 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES--FACILITY MANAGEMENT CONTRACTS (JAN 2004) - ALTERNATE II (JAN 2004)

- (a) General.
 - (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon:
 - (i) The contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and
 - (ii) The contractor's or contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.
 - (2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.
 - (3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.
 - (4) If the contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.
- (b) Reduction Amount.

- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.
- (2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26 percent nor greater than 100 percent of the amount of earned fee, fixed fee, profit, or the contractor's share of cost savings for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure.
- (3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).
 - (i) Degree of control the contractor had over the event or incident.
 - (ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.
 - (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
 - (iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.
 - (v) Contractor demonstration to the contracting officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

- (vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).
 - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).
 - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4)
- (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.
 - (ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the contractor's share of cost savings that is otherwise earned during the evaluation period.
 - (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the contracting officer or fee determination official as otherwise payable based on the contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.
 - (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not

aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned (provisionally or otherwise), the contractor shall immediately return the excess to the Government. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

- (v) At the end of the contract:
 - (A) The Government will pay the contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned exceeds the sum of the payments the contractor has received; or
 - (B) The contractor shall return to the Government the amount by which the sum of the payments the contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)
- (c) Environment, Safety and Health (ES&H). Performance failures occur if the contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
 - (1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.
 - (i) Type A accident (defined in DOE Order 225.1A).

- (ii) Two Second Degree performance failures during an evaluation period.
- (2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:
- (i) Type B accident (defined in DOE Order 225.1A).
 - (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
 - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.
- (3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
- (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements; or internal oversight of DOE Order 440.1A requirements.
 - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.
 - (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

- (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.
- (d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:
- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:
 - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, in a

SAP, information identified as SCI, or high risk nuclear weapons-related data.

- (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.
- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
 - (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
 - (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.
 - (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.
- (e) Minimum requirements for specified level of performance.
- (1) At a minimum the contractor must perform the following:
 - (i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;
 - (ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
 - (iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.

- (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.
- (f) Minimum requirements for cost performance.
- (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
 - (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
 - (3) The contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

I.131 DEAR 970.5215-4 COST REDUCTION (DEC 2000)

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

- (b) Definitions. Administrative cost is the contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

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

DOE cost is the Government cost incurred implementing and validating the CRP.

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

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

Shared Net Savings are those net savings which result from:

- (1) a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort; or
- (2) a design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the contracting officer.

Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

- (c) Procedure for submission of CRPs.
 - (1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:
 - (i) Current Method (Baseline)-A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative, and supporting documentation.
 - (ii) New Method (New Proposed Baseline)-A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.
 - (iii) Feasibility Assessment-A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.
 - (2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:
 - (i) The proposed contractual arrangement and the justification for its use; and
 - (ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.
- (d) Evaluation and Decision. All CRPs must be submitted to and approved by the contracting officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:

- (1) Pose a risk to the health and safety of workers, the community, or to the environment;
 - (2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;
 - (3) Require a change in other contractual agreements;
 - (4) Result in significant organizational and personnel impacts;
 - (5) Create a negative impact on the cost, schedule, or scope of work in another area;
 - (6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and
 - (7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.
- (e) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the contracting officer. The contracting officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (TBD) 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.132 970.5215-5 LIMITATION ON FEE (DEC 2000)

- (a) For the purpose of this solicitation, fee amounts shall not exceed the total available fee allowed by the fee policy at 48 CFR 970.1504-1-1, or as specifically stated elsewhere in the solicitation.
- (b) The Government reserves the unilateral right, in the event an offeror's proposal is selected for award, to limit: fixed fee to not exceed an amount established pursuant to 48 CFR 970.1504-1-5; and total available fee to not exceed an amount established pursuant to 48 CFR 970.1504-1-9; or fixed fee or total available fee to an amount as specifically stated elsewhere in the solicitation.

I.133 970.5217-1 WORK FOR OTHERS PROGRAM (NON-DOE FUNDED WORK) (JAN 2005)

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

- (b) Contractor's Implementation. The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.
- (c) Conditions of Participation in Work for Others Program. The Contractor:
 - (1) Must not perform Work for Others activities that would place it in direct competition with the domestic private sector;
 - (2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;
 - (3) Must not commence work on any Work for Others activity until a Work for Others proposal package has been approved by the DOE Contracting Officer or designated representative;
 - (4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232-6;
 - (5) Must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Work for Others proposal;
 - (6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Work for Others activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;
 - (7) Must perform all Work for Others projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

- (8) May subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE contractor's performance as defined in the DOE approved work for others proposal package; and,
- (9) Must maintain a summary listing of project information for each active Work for Others project, consisting of:
 - (i) Sponsoring agency;
 - (ii) Total estimated costs;
 - (iii) Project title and description;
 - (iv) Project point of contact; and,
 - (v) Estimated start and completion dates.
- (d) Negotiation and Execution of Work for Others Agreement.
 - (1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Work for Others project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Work for Others agreement.
 - (2) The Contractor must submit all Work for Others agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.
- (e) Preparation of Project Proposals. When the Contractor proposes to perform Work for Others activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.
- (f) Work for Others Appraisals. DOE may conduct periodic appraisals of the Contractor's compliance with its Work for Others Program policies, practices and procedures. The Contractor must provide facilities and other

support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

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

**I.134 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS
MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)**

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.135 970.5222-2 OVERTIME MANAGEMENT (DEC 2000)

- (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.136 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

- (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 Department of Energy 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.137 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)

- (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.138 970.5223-3 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE FACILITIES (DEC 2000)

- (a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.
- (b) By submission of its offer, the offeror agrees to provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.
- (c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the offeror unqualified and ineligible for award.

I.139 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)

- (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.140 970.5223-5 DOE MOTOR VEHICLE FLEET FUEL EFFICIENCY
(OCT 2003)**

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.141 970.5226-1 DIVERSITY PLAN (DEC 2000)

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, Appendix - H. 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.142 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)

- (a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, *42 U.S.C. 7274h*, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.
- (b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to *41 U.S.C. 403*) expected to exceed \$500,000.

I.143 970.5226-3 COMMUNITY COMMITMENT (DEC 2000)

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.144 DEAR 970.5227-1 RIGHTS IN DATA-FACILITIES (DEC 2000)

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.145 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)

- (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.146 970.5227-5 – NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

- (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.147 970.5227-6 PATENT INDEMNITY - SUBCONTRACTS (DEC 2000)

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 in accordance with FAR 48 CFR 52.227-3.

I.148 970.5227-8 REFUND OF ROYALTIES (AUG 2002)

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

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) 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.150 970.5228-1 INSURANCE-LITIGATION AND CLAIMS (MAR 2002)

- (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.151 970.5229-1 STATE AND LOCAL TAXES (DEC 2000)

- (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.

CLAUSE I.152 IS APPLICABLE IF THE SELECTED OFFEROR IS THE INCUMBENT

I.152 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) – ALTERNATE I (DEC 2000)

- (a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before [Insert date this clause was included in contract], in conjunction with the management and operation of the Yucca Mountain Project, shall be deemed incurred under Contract No. DE-AC28-01RW12101.
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

CLAUSE I.153 IS APPLICABLE IF THE SELECTED OFFEROR IS OTHER THAN THE INCUMBENT CONTRACTOR

I.153 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) - ALTERNATE II (DEC 2000)

- (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 **April 1, 2009**. 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 **April 1, 2009**, 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.154 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS UPON FINDING OF SUBSTANTIAL EVIDENCE OF FRAUD (DEC 2000)

- (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.155 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) - ALTERNATE II AND ALTERNATE III (DEC 2000)

- (a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the contracting officer.
- (b) Payments on Account of Allowable Costs. The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or

more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

- (c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-B. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.
- (d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (e) Financial settlement. The Government shall promptly pay to the contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the contracting officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:
 - (1) Compliance by the contractor with DOE's patent clearance requirements, and
 - (2) The furnishing by the contractor of:

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

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

- (k) 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.156 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (JUN 2007)

- (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 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 provisions of 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 design and maintain an internal audit plan and an internal audit organization.
 - (1) Upon contract award, the exercise of any contract option, or the extension of the contract, the contractor must submit to the contracting officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe:
 - (i) The internal audit organization's placement within the contractor's organization and its reporting requirements;
 - (ii) The audit organization's size and the experience and educational standards of its staff;
 - (iii) The audit organization's relationship to the corporate entities of the contractor;
 - (iv) The standards to be used in conducting the internal audits;
 - (v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;
 - (vi) The intended use of external audit resources;
 - (vii) The plan for audit of subcontracts, both pre-award and post-award; and
 - (viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE contracting officer.
 - (2) By each January 31 of the contract performance period, the contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.
 - (3) By each June 30 of the contract performance period, the contractor must submit to the contracting officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.

- (4) The contracting officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.
- (j) Remedies. If at any time during contract performance, the contracting officer determines that unallowable costs were claimed by the contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the contracting officer may, in his or her sole discretion, require the contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the contracting officer, where he or she deems it appropriate, may: Impose a penalty under 970.5242-1, Penalties for unallowable costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

I.157 970.5232-4 OBLIGATION OF FUNDS (DEC 2000)

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is -dollars (\$0). 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 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 45 day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only 45 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.158 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)

- (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.159 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000)

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.160 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000)

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.161 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000)

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.162 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000)

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.163 970.5242-1 PENALTIES FOR UNALLOWABLE COSTS (DEC 2000)

- (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.164 970.5243-1 CHANGES (DEC 2000)

- (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.165 970.5244-1 CONTRACTOR PURCHASING SYSTEM (MAY 2006)

- (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) [Removed and Reserved] [71 FR 16241, Mar. 31, 2006]
- (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.166 970.5245-1 PROPERTY (DEC 2000)

- (a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) Title to property. Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
- (c) Identification. To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.
- (d) Disposition. The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the contracting officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of 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 Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property.

(1) (i) The contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;

(B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting

officer to safeguard such property under paragraph (e) of this clause; or

- (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.
- (ii) If, after an initial review of the facts, the contracting officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government for the loss, destruction, or damage.
- (2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:
 - (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.
 - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.
 - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.
- (g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the

contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:

- (1) Shall immediately inform the contracting officer of the occasion and extent thereof,
 - (2) Shall take all reasonable steps to protect the property remaining, and
 - (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.
- (h) Government property for Government use only. Government property shall be used only for the performance of this contract.
- (i) Property Management.
- (1) Property Management System.
 - (i) The contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The contractor's property management system shall be submitted to the contracting officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the contracting officer may from time to time prescribe.
 - (ii) In order for a property management system to be approved, it must provide for:
 - (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

- (B) Employee personal responsibility and accountability for Government-owned property;
 - (C) Full integration with the contractor's other administrative and financial systems; and
 - (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
- (iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.
- (2) Property Inventory.
- (i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.
 - (ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- (j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:
- (1) All or substantially all of the contractor's business; or
 - (2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract; or

- (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
 - (5) A separate and discrete major task or operation in connection with the performance of this contract.
- (k) The contractor shall include this clause in all cost reimbursable subcontracts.

I.167 AL 2006-09 ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (JULY 2006)

When the contract requires the specification or delivery of energy consuming products for use in a Federal facility, the contractor will specify or deliver ENERGYSTAR[®] qualified products or products conforming to the Federal Energy Management Program's (FEMP) Energy Efficiency Requirements, whichever may be applicable, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. Information about these products is available for ENERGYSTAR[®] at <http://www.energystar.gov/products> and FEMP at http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm .