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SECTION B: SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SERVICES BEING ACQUIRED

CLIN 0001 MANAGEMENT AND OPERATION OF THE SANDIA NATIONAL LABORATORIES

In accordance with the terms and conditions of this Contract, the Contractor shall provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incidental to, the efficient, effective, and safe management and operation of the Sandia National Laboratories (SNL) in Albuquerque, New Mexico (NM) and at all satellite facilities as provided in the Statement of Work. This CLIN includes construction projects other than Capital Construction Projects as defined in this Contract.

CLIN 0001A TRANSITION TERM

The Transition Term will be four months, on a cost reimbursement (no fee) basis, with an estimated cost of \$ TBD.

CLIN 0001B BASE TERM

The Base Term is five years of performance on a cost-plus-fixed-fee and award fee basis.

CLIN 0001C OPTION TERM 1

Option Term 1 is one year of performance on a cost-plus-fixed-fee and award fee basis.

CLIN 0001D OPTION TERM 2

Option Term 2 is one year of performance on a cost-plus-fixed-fee and award fee basis.

CLIN 0001E OPTION TERM 3

Option Term 3 is one year of performance on a cost-plus-fixed-fee and award fee basis.

CLIN 0001F OPTION TERM 4

Option Term 4 is one year of performance on a cost-plus-fixed-fee and award fee basis.

CLIN 0001G OPTION TERM 5

Option Term 5 is one year of performance on a cost-plus-fixed-fee and award fee basis.

CLIN 0002 STRATEGIC PARTNERSHIP PROJECTS

The Contractor shall, in accordance with Section J, Appendix A, Chapter II Work Scope Structure, paragraph 1.8 Strategic Partnership Projects (SPP) (formerly known as Work for Others (WFO) Program), and all other the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to, the effective, efficient, and safe performance all SPP efforts as directed by the Contracting Officer.

CLIN 0002A BASE TERM

The Base Term is five years of performance on a cost-plus-fixed-fee basis.

CLIN 0002B OPTION TERM 1

Option Term 1 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0002C OPTION TERM 2

Option Term 2 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0002D OPTION TERM 3

Option Term 3 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0002E OPTION TERM 4

Option Term 4 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0002F OPTION TERM 5

Option Term 5 is one year of performance on a cost-plus-fixed-fee basis.

CLIN 0003 CAPITAL CONSTRUCTION PROJECTS

The Contractor shall provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incidental to, the efficient, effective, and safe management and/or performance of Capital Construction Projects (defined in Clause H-20 of this contract) as the Parties may agree. Each mutually-agreed-upon Capital Construction Project shall be identified hereunder as a Sub-CLIN to CLIN 0003 via bilateral contract modification. Price and price structure (such as Firm Fixed Price, Cost-Plus-Incentive-Fee, or other price structures as agreed) and any applicable special terms and conditions shall be identified for each Capital Construction Project covered by CLIN 0003.

B-2 CONTRACT TYPE AND VALUE

- (a) This is a performance-based, Management and Operating (M&O) Contract with cost-plus-fixed-fee and cost-plus-award fee provisions.
- (b) The estimated cost, fixed fee (FF), award fee (AF), and Total fee earned for CLIN 0001 (DOE/NNSA work) is set forth in Table 1 below:

Table 1 -- CLIN 0001 -- Management and Operation of SNL

Contract Period	DOE/NNSA Estimated Cost	Fixed Fee (FF) Dollar Amount (\$)	DOE/NNSA Award Fee (AF) Dollar Amount (\$)	Total Available Fee (FF + AF)	Total Fee Earned (FF + AF)
Transition Term	\$ TBD	\$0	\$0	\$0	\$0
Base Term (Year 1)	\$ TBD	\$TBD	\$ TBD		
Base Term (Year 2)	\$ TBD	\$TBD	\$ TBD		
Base Term (Year 3)	\$ TBD	\$TBD	\$ TBD		
Base Term (Year 4)	\$ TBD	\$TBD	\$ TBD		
Base Term (Year 5)	\$TBD	\$TBD	\$ TBD		
Option Term 1 (if exercised)	\$TBD	\$TBD	\$ TBD		
Option Term 2 (if exercised)	\$TBD	\$TBD	\$ TBD		
Option Term 3 (if exercised)	\$TBD	\$TBD	\$ TBD		
Option Term 4 (if exercised)	\$ TBD	\$TBD	\$ TBD		
Option Term 5 (if exercised)	\$ TBD	\$TBD	\$TBD		

[Table 1 DOE/NNSA Estimated Cost to be completed by the Contracting Officer annually based on the enacted budget for the fiscal year. The Fee amounts to be completed by the Contracting Officer at the effective date of the Contract utilizing the fees determined at Contract award]

Note: Total Fee Earned will be filled in by the issuance of a unilateral modification to the Contract.

- (c) The estimated cost and fixed fee for CLIN 0002 (Strategic Partnership Projects -- Section J, Appendix A, Chapter II Work Scope Structure, paragraph 1.8) are set forth in Table 2 below. The estimated cost and the fixed fee for the Strategic Partnership Projects during the Base Term of the Contract and for each Option

Term will be established by the DOE/NNSA prior to the commencement of the applicable fiscal year and will be incorporated into the Table below through a modification to this clause. The FF rate for SPP will not exceed TBD% [Upon contract award the Contracting Officer will insert the SPP fee rate here] of the estimated cost of all projects anticipated for the applicable fiscal year.

Table 2 CLIN 0002 -- Strategic Partnership Projects

Contract Period	Estimated Cost	Fixed Fee	Estimated Cost + Fixed Fee
Base Term Year 1	\$TBD	\$TBD	\$TBD
Base Term Year 2	\$TBD	\$TBD	\$TBD
Base Term Year 3	\$TBD	\$TBD	\$TBD
Base Term Year 4	\$TBD	\$TBD	\$TBD
Base Term Year 5	\$TBD	\$TBD	\$TBD
Option Term 1 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 2 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 3 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 4 (if exercised)	\$TBD	\$TBD	\$TBD
Option Term 5 (if exercised)	\$TBD	\$TBD	\$TBD

[Table 2 Estimated Cost to be completed by the Contracting Officer annually based on the estimated level of SPP projects for the year. The Fixed Fee amount to be completed by the Contracting Officer at the effective date of the Contract utilizing the fees determined at Contract award]

- (d) The total estimated cost for the Transition Term (CLIN 0001A), the estimated cost and fixed fee for Base Term (CLINs 0001B and 0002A), including DOE/NNSA and Strategic Partnership Projects is \$TBD.
- (e) The FF and AF for CLIN 0001, and the FF rate for CLIN 0002 will not be negotiated on an annual basis and are established at Contract award.

B-3 CONTRACT FEE STRUCTURES

CLIN 0001:

- (a) Fixed Fee (FF)

The estimated cost and FF for the Base Term of the Contract and for each Option Term, if exercised by DOE/NNSA are shown in paragraph B-2 (b) *Contract Type and Value*, Table 1.

All proposed team members must share the fee pool, whether they are subcontractors or members of a joint-venture, and no separate fee or profit will be paid on subcontracts with team members. The fee restriction above 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 I Clause entitled, Mentor-Protégé Program; (3) a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) competitively awarded subcontracts for commercial items as defined in FAR Subpart 2.1.

(b) Award Fee (AF)

The available AF for each performance period of the Base Term and each Option Term, if exercised by DOE/NNSA, are shown in the tables in paragraph B-2 (b), Contract Type and Value. The Contractor shall be eligible to earn AF fee of up to the amount specified for each performance period of the Base Term (CLIN 0001B), based on its performance under the criteria established in paragraph B-7 Leadership Performance Evaluation. The AF decision is a unilateral decision of the Fee Determining Official (FDO) based on the Contractor's performance rating under this Contract, and the terms and conditions of the Contract. The AF earned is payable in accordance with the contract clause DEAR 970.5232-2, *Payments and Advances* (DEC 2000) ALTERNATE II (DEC 2000) ALTERNATE III (DEC 2000) (NNSA CLASS DEVIATION OCT 2011).

CLIN 0002:

(c) Strategic Partnership Projects – Fixed Fee (FF)

The FF for SPP for the Base Term and each Option, if exercised by DOE/NNSA, are shown in paragraph B-2 (c), *Contract Type and Value*, Table 2.

(d) Payment of Fixed Fee

(1) The FF for the Base Term of the Contract (and option periods to the extent exercised) shall be paid monthly at the rate of one-twelfth (1/12) of the annual FF per month. Such payment amounts are to be drawn down by the Contractor from the Contract's special financial institution account in monthly installments on the last day of each month.

(2) The Contractor is not authorized to draw down the AF prior to final fee determination and authorization by the Contracting Officer.

(e) Unearned Fee

NNSA HQ will determine how unearned fee is reinvested in the Nuclear Security Enterprise (NSE). Unearned AF in a performance period will not be available for application to any future performance periods.

- (f) The Parties agree that a change made pursuant to the Changes clause of this Contract, DEAR 970.5243-1, or pursuant to any other clause of this Contract granting the Government the right to make unilateral changes to the Contract, shall not be considered a material change, and shall not warrant an equitable adjustment to fee (either FF, AF, or any fee established under any CLIN, including CLIN 0003), unless, at a minimum, it results in an increase or decrease of more than ten percent (10%) to the estimated costs stated in Tables 1 and 2 of this Clause, B-2, or as stated elsewhere in this Contract for CLIN 0003. However, this alone shall not be determinative of whether or not the change is a material change or otherwise warrants an equitable adjustment, and the Contracting Officer shall also consider other factors, including but not limited to, the degree of the change in the level and type of effort or work, and the degree of the change in the level of risk assumed by the contractor

B-4 KEY PERSONNEL REPLACEMENT

Unless approved in advance, in writing, by the Contracting Officer, 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 Contract's Section I clause entitled "DEAR 970.5203-3, *Contractor's Organization* (DEC 2000)", beginning on the effective date of the Contract through the first two years of the Base Term of the contract, or for a replacement Key Person within two years of being placed in the position, the Contractor shall forfeit two years of the DOE/NNSA reimbursable annual salary, bonuses and relocation costs as well as associated burdens, for that position for each occurrence.

B-5 OBLIGATION OF FUNDS

Pursuant to this Section I clause entitled "DEAR 970.5232-4, *Obligation of Funds*, (DEC 2000)" the total amount obligated by the Government with respect to this Contract is \$____[TBD]_____.

B-6 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary to Section I clause DEAR 952.250-70, *Nuclear Hazards Indemnity Agreement*, the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which DOE/NNSA may legally utilize for such purposes.

B-7 LEADERSHIP PERFORMANCE EVALUATION

The Contractor's Leadership performance will be measured against how the Contractor has strategically partnered with DOE/NNSA and demonstrated leadership success in achieving positive results. This may be evidenced by:

- (a) Achieving site mission deliverables while supporting and enabling the overall DOE/NNSA mission,
- (b) Improving safety culture,
- (c) Maintaining critical skills and infrastructure,
- (d) Advancing Science, Technology & Engineering (ST&E), including Laboratory Directed Research and Development (LDRD) and Tech Transfer,
- (e) Operating the Laboratories effectively, efficiently, safely, and securely to meet current mission requirements and to accomplish additional Strategic Investments that enhance or develop new capabilities, address long-standing challenges, or respond to new or emerging threats,
- (f) Resolving issues and ensuring continuous improvement internally and across the DOE/NNSA while meeting Contract requirements, and
- (g) Demonstrating parent company involvement/commitment to the overall improvement of the Laboratories and the DOE.

SECTION C: DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

C-1 STATEMENT OF WORK

The work to be performed is set forth in Section J, Appendix A, *Statement of Work*.

SECTION D: PACKAGING AND MARKING

D-1 PACKAGING AND MARKING

Packaging and marking of items to be delivered shall be in accordance with work authorization requirements or other written direction of the Contracting Officer or the Contracting Officer Representative (COR).

SECTION E: INSPECTION AND ACCEPTANCE

E-1 FAR 52.246-5 INSPECTION OF SERVICES – COST REIMBURSEMENT (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 INSPECTION AND ACCEPTANCE

Inspection of all activities and acceptance for all work and effort under this Contract shall be accomplished by the Contracting Officer or any other duly authorized representative. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties. Only the Contracting Officer is authorized to accept work which does not comply with the Contract requirements (including requirements of Work Authorizations) or to otherwise waive any applicable requirements. Acceptance of nonconforming work by any other individual shall not constitute acceptance on behalf of the Government.

SECTION F: DELIVERIES OR PERFORMANCE

F-1 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-2 STOP WORK IN EVENT OF IMMINENT DANGER

The Contractor shall immediately cease any activity that is imminently dangerous to the life or health of the workers, the public, or the environment. In the event of imminent danger, any Federal or Contractor employee is authorized to instruct the Contractor to stop work. The Contracting Officer must be contacted immediately after the event such that a written stop-work order can be issued in accordance with Section F clause FAR 52.242-15, *Stop-Work Order, Alternate I*. Employees of the Contractor shall be apprised of their right to stop work pursuant to this clause. The Contractor shall include this clause in all subcontracts to be performed at the sites.

F-3 PERIOD OF PERFORMANCE

The period of performance of this Contract shall expire five years after completion of the Transition Term, unless sooner reduced, terminated or extended in accordance with this Contract. The period of performance may be extended in increments, or portions thereof, for up to an additional five years of performance. The Contract's maximum period of performance, including the Transition Term and Option Term(s), if exercised, shall not exceed 10 years and four months. The period of performance of this Contract consists of:

- (1) Transition Term: A period of four months beginning on the effective date of the Contract. During the Transition Term, the Contractor shall perform the activities and provide the documents identified in Clause F-6 entitled "Deliverables During Transition" and Section J, Appendix J – Transition Plan. The Contractor's responsibility for management and operation of the Sandia National Laboratories shall commence with the Base Term.
- (2) Base Term: A period of five years beginning after completion of the four month Transition Term.
- (3) Option Term(s): A period from one to five years beginning after completion of the Base Term, if the DOE/NNSA chooses to exercise one or more of the following options:
 - Option Term 1: If exercised, one year from the end of the Base Term.
 - Option Term 2: If exercised, one year from the end of Option Term 1.
 - Option Term 3: If exercised, one year from the end of Option Term 2.
 - Option Term 4: If exercised, one year from the end of Option Term 3.
 - Option Term 5: If exercised, one year from the end of Option Term 4.

F-4 PRINCIPAL PLACES OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations within the United States and outside of the continental U.S. The principal place of performance will

be at Albuquerque, New Mexico and Livermore, California. Work is also conducted at satellite facilities listed in the Statement of Work.

F-5 EVALUATION OF PERFORMANCE AND EXERCISE OF OPTION(S)

The decision to extend this Contract via the exercise of an option will be a unilateral decision made by NNSA. Exercise of any option shall be in accordance with Section I clause FAR 52.217-9, *Option to Extend the Term of the Contract*. At a minimum, the NNSA will consider the following in determining whether to extend the Contract:

- (1) The Contractor's overall performance, taking into consideration performance evaluations pursuant to the Contractor Performance Assessment Reporting System (CPARS);
- (2) The considerations under DEAR 970.1706-1(b) for exercising options under M&O contracts.

F-6 DELIVERABLES DURING TRANSITION

In addition to the transition deliverables identified elsewhere in this Contract, the following deliverables shall be submitted during the Transition Term:

(a) Transition Plan

The Contractor shall provide, for approval by the Contracting Officer, a Transition Plan, including a Transition Cost Estimate, 10 days after Contract award. The Transition Term is specified in paragraph F-3, *Period of Performance*. Upon written approval by the Contracting Officer, the Transition Plan, shall be incorporated into Section J, Appendix J -*Transition Plan*.

(b) Transition Cost Estimate

- (1) The Transition Cost Estimate shall include the costs associated with the Transition Plan and the costs necessary for the Contractor to meet the transition requirements during the Transition Term. A detailed schedule for accomplishment of these tasks during the Transition Term shall also be provided to support the requested cost estimate.
- (2) The Contractor shall provide a cost summary for the Transition Plan that clearly identifies, by cost element, the portion of the cost proposal that pertains to each participant (if a teaming arrangement is proposed), including subcontractors. In addition, each participant and each subcontractor must provide separate exhibits, summary schedules, and supporting cost information in the same format and level of detail as required below. A transition fee is not allowable.
 - (i) Labor: Identify proposed transition labor hours and unburdened labor rates by labor category and or/specific individual, including

Key Personnel. Explain the basis for the proposed labor hour and labor rate estimates.

- (ii) Indirect Costs: Identify the cost elements included in each indirect rate cost pool and allocation base. Explain the basis of estimate for each indirect cost rate proposed and the methods used to derive the proposed rates.

(c) Conflict of Interest Compliance and Management Plan

The Contractor shall submit a Conflict of Interest Compliance and Management Plan (Plan) to the Contracting Officer for approval within 60 days after the effective date of this Contract. The Plan shall address the Contractor's approach for adhering to Section I clause DEAR 952.209-72, *Organizational Conflicts of Interest* (AUG 2009), Alternate I, and describe its procedures for aggressively self-identifying and resolving both organizational and employee conflicts of interest. The overall purpose of the Plan is to demonstrate how the Contractor will assure that its operations meet the highest standards of ethical conduct, and how its assistance and advice are impartial and objective.

SECTION G: CONTRACT ADMINISTRATION DATA

G-1 GOVERNMENT CONTACTS

- (a) The NNSA Manager, Sandia Field Office (SFO) is the Contractor's primary point of contact for all operational and policy matters, except as identified in (b, c, d, etc.) below, regarding performance of this contract. The SFO Administrative Contracting Officer is the Contractor's primary point of contact for all contractual matters. The SFO Manager and Administrative Contracting Officer can be reached at:

U.S. Department of Energy, National Nuclear Security Administration
Sandia Field Office
P.O. Box 5400, Mail Stop 0184
Albuquerque, NM 87185-5400

- (b) The Patent Counsel for items concerning patent, intellectual property, technology transfer, copyright, open source, licenses and technical data issues is identified below. Correspondence being sent to the NNSA Patent Counsel should be addressed to:

U.S. Department of Energy, National Nuclear Security Administration
NNSA Patent Counsel
Office of the General Counsel (NA-GC)
P.O. Box 5400
Albuquerque, NM, 87185-5400

- (c) The Contractor may use the Organizational Property Management Officer as a point of contact for guidance and assistance involving property requirements. The Contracting Officer shall be contacted for any matter that involves a change in any of the express terms and conditions of the Contract. Correspondence being sent to the Organizational Property Management Officer should be addressed to:

U.S. Department of Energy/National Nuclear Security Administration
Organizational Property Management Officer (OPMO)
Personal Property Albuquerque
P.O. Box 5400
Albuquerque, NM, 87185-5400

- (d) Technical and Administrative Correspondence:

Technical and administrative correspondence concerning performance of this Contract shall be addressed to the responsible NNSA SFO Contracting Officer Representative (COR), with an information copy to the Contracting Officer.

(e) Designation of Contracting Officer Representative(s)

The COR's official delegation of authority will be provided by the Contracting Officer to the Contractor. This delegation will describe the COR's authorities in detail. However, it is emphasized that only the Contracting Officer has the authority to modify the terms of this Contract, therefore, in no event will any understanding, agreement, modification, change order, or other matter deviating from the terms of the basic Contract between the Contractor and any other person be effective or binding on the Government. When/If, in the opinion of the Contractor, an effort outside the existing scope of this Contract is requested, the Contractor shall promptly notify the Contracting Officer in writing, before proceeding with the COR direction. No action shall be taken by the Contractor unless the Contracting Officer has issued a formal contractual change.

If an effort under this Contract requires that an Alternate COR perform duties in the absence of the responsible COR, all responsibilities and functions assigned to the COR shall be the responsibility of the Alternate COR acting on behalf of the COR.

(f) Contractual Correspondence/Matters

Correspondence involving contractual matters shall be addressed to the Administrative Contracting Officer (ACO), who is also primarily responsible for all contractual actions required to be taken by the Government under the terms of this Contract. The ACO may be contacted at

Contracting Officer
U.S. Department of Energy/NNSA
Sandia Field Office
P.O. Box 5400, Mail Stop 0184
Albuquerque, NM 87185-5400

(g) Marking

To promote timely and effective administration, correspondence submitted under this Contract shall contain a subject line commencing with the Contract number, as illustrated:

SUBJECT: Contract Number [TBD], (insert topic of correspondence after Contract Number)

G-2 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this Contract, a Contracting Officer is the only individual authorized, on behalf of the Government, to:

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

G-3 CONTRACTOR CONTACT

The Contractor shall identify to the Contracting Officer the point of contact who has the authority and is responsible for managing, administering, and negotiating changes to the terms and conditions of this Contract as well as executing contract modifications on behalf of the Contractor.

Name: TBD
Position: TBD
Company: TBD
Address: TBD
Phone: TBD
E-mail: TBD

G-4 PERFORMANCE GUARANTEE(S)

If the Contractor has organized a separate legal entity to perform the work under this Contract, the Contractor's parent organization(s) or all member organizations, if the Contractor is a joint venture, limited liability company, or other similar entity, where more than one company is involved in a business relationship created for the purpose of performing under this contract, shall guarantee performance as evidenced by the Performance Guarantee Agreement(s) incorporated in Section J, Appendix I, Performance Guarantee Agreement(s)(subcontractors are not be required to provide a performance guarantee). If the Contractor is a joint venture, limited liability company, or other similar entity, where more than one company is involved, the parent or all member organizations shall assume joint and severable liability for the performance of the Contract. In the event any of the signatories to the Performance Guarantee Agreement(s) enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

G-5 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.

The performing entity is TBD. This entity is comprised of: TBD.

- (b) Accordingly, the Contractor and the Government agree that the Contractor shall take no action to replace the components of the entity named in paragraph (a) of this clause without the prior written approval of the Contracting Officer.

G-6 RESPONSIBLE CORPORATE OFFICIAL

Notwithstanding G-4, Performance Guarantee(s), the Government may contact, as necessary, the single responsible Corporate Official identified below, who is at a level above the senior Contractor official on-site and who is accountable for the performance of the Contractor. Should the responsible Corporate Official change during the period of the Contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: TBD
Position: TBD
Company: TBD
Address: TBD
Phone: TBD
E-mail: TBD

G-7 INVOICING FOR TRANSITION COSTS

- (a) The Contractor shall submit vouchers electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS) for reimbursement for work performed under CLIN 0001A, Contract Transition Term. VIPERS allows vendors to check the payment status of any voucher submitted to the DOE. To obtain access to and use VIPERS, please visit the web page at <https://vipers.doe.gov/>. The Contractor shall contact the Contracting Officer if the Contractor is unable to submit invoices electronically.
- (b) The Contractor shall invoice for work performed in accordance with FAR 52.216-7 and as directed by the Contracting Officer following the procedures at paragraph (a) of this clause. All works completed during transition shall be billed within 60 days after the end of transition period.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H-1 CONTINUATION OF PREDECESSOR CONTRACTOR'S OBLIGATIONS AND TRANSFER OF OBLIGATIONS TO SUCCESSOR CONTRACTOR

(a) Existing contractual agreements and regulatory obligations entered into under Contract DE-AC0-94AL85000 will continue during performance of this contract. The Contractor shall assume all existing contractual, commercial, regulatory, and other similar obligations incurred under the predecessor Contract, and shall be fully responsible and accountable under this Contract for the performance of such obligations. Examples of existing obligations include, but are not limited to:

- (1) Subcontracts and purchase orders;
- (2) Agreements and memoranda of understanding with research organization, universities, and colleges;
- (3) Strategic Partnership Project Agreements;
- (4) Collection of unpaid accounts receivables';
- (5) Real Property Leases, Land Use Permits, and the Kirtland Air Force Base Support Agreement;
- (6) Environmental and other permits and licenses;
- (7) Mutual Aid and emergency response agreements;
- (8) Ongoing litigation and claims by or against the predecessor contractor; and,
- (9) Other similar agreements.

(b) Additionally, unless otherwise stated in this Contract, management systems, plans, permits, procedures, and other agreements that exist on the effective date of the Contract will continue until the Contractor addresses the applicable requirements contained in this Contract. For changes that require NNSA approval, the Contractor shall not implement a change until it is formally approved by the Contracting Officer.

(c) The Contractor agrees that all obligations entered into under this Contract shall be transferrable and assignable to the successor contractor as directed by the Contracting Officer. If, at the completion or termination of this Contract, the Contracting Officer does not direct the Contractor to transfer or assign such obligations to the successor contractor, the Contractor shall be liable, responsible, and accountable for closing out and liquidating such obligations, or for taking such other action as the Contracting Officer may direct. The Contractor shall remain liable and responsible for any unallowable costs which it incurred, or caused to be incurred, in performance of this contract, regardless of whether they arise out of, or relate to, any obligations transferred or assigned to the successor contractor or to another entity.

H-2 SMALL BUSINESS PARTICIPATION

(a) The Small Business Subcontracting Plan is incorporated in Section J, Appendix E. The Contractor shall submit annual subcontracting goals 60 days prior to the beginning of

each fiscal year during the term of this Contract, or by such other date as authorized in writing by the Contracting Officer.

(b) Implementation of FAR 52.219-10: Determinations made under paragraph (b) of clause entitled “Incentive Subcontracting Program” are unilateral decisions made solely at the discretion of the Government. During performance of this contract the Contracting Officer makes the determination of the appropriate percentage and category for incentives. The Contracting Officer can limit the percentage to a specific year(s).

H-3 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR

The Representations, Certifications, and Other Statements of Offeror completed by the Contractor and dated [TBD], are hereby incorporated in this Contract by reference.

H-4 ORGANIZATIONAL CONFLICT OF INTEREST (OCI) – SPECIAL PROVISION

The Contractor and the Contractor's parent(s) and affiliate(s), if any, shall comply with the provisions of the approved SNL OCI Management Plan in the performance of the Contract and any deviations or amendments to the Plan shall require the express written approval, in advance, from the Contracting Officer. The Contractor shall submit to the Contracting Officer annual Organizational Conflict of Interest (OCI) Disclosure Update Statements beginning November 1st of each year after Contract award. Notwithstanding the annual disclosure requirement, any change in relevant facts since the last OCI Disclosure Update Statement shall be disclosed to the Contracting Officer pursuant to Section I clause DEAR 952.209-72, *Organizational Conflicts of Interest, Alternate I*, paragraph (c)(1), *Disclosure After Award*. Initial notification to the Contracting Officer shall be accomplished as soon as the facts are known with a full disclosure within 60 days of the initial notification, unless otherwise directed by the Contracting Officer.

H-5 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 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H-6 FLOWDOWN OF RIGHTS TO PROPOSAL DATA

The Contractor shall include the clause of 48 CFR 52.227-23 “Rights of Proposal Data (Technical)” in any subcontract awarded based on consideration of a technical proposal.

H-7 PRIVACY RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Contract's "Privacy Act" clause to include:

<u>DOE System No.</u>	<u>Title</u>
DOE-31	Firearms Qualification Records
DOE-45	Weapon Data Access Control System
DOE-48	Security Education and/or Infraction Reports
DOE-52	Alien Visits and Participation

H-8 SANDIA NATIONAL LABORATORIES MANAGEMENT SYSTEM (SEP 2015)

- (a) The Contractor shall maintain registration of its management system to a national or international consensus standard such as ISO 9001. The management system description shall be approved and monitored by the Contractor's Board of Directors. This management system will provide transparency to enable the Government to monitor the Contractor's performance. The Contractor shall notify the Contracting Officer of significant changes to the management system. An effectively working management system will provide the government the opportunity to reduce transactional performance monitoring.
- (b) The Contractor's management system shall have the following key attributes:
 - (1) Description of the management system to include vision, mission, management structure, key activities, management entity accountabilities and commitment to operational and business excellence.
 - (2) Electronic access to the management system information by government personnel with performance monitoring responsibilities.
- (c) The Contractor's management system shall include the application of quality principles and defect prevention methods to plan the work, execute the work according to the plan, check the work against requirements, policies, and objectives, and report the results. The results shall be acted upon to continually improve the performance and quality of the work. The Contractor's management system shall have the following minimum attributes:
 - (1) A risk management process.
 - (2) Performance monitoring including metrics and associated performance targets.
 - (3) Rigorous, risk-based, credible assessments (including self-assessments and internal independent assessments). The Contractor is encouraged to seek external audits, peer reviews, assessments and risk and vulnerability studies from nationally recognized experts to assess and improve its work processes.

- (4) Identification and correction of negative performance/compliance trends before they become significant issues.
 - (5) Maintain ISO 14004 for Environmental Management System (EMS) registration and pursue other registrations/certification as appropriate.
 - (6) Incident/event reporting including accident investigations.
 - (7) Issues management (including graded analysis of causes, identification of corrective actions, corrective action tracking, monitoring and closure, validation of effectiveness, and trend analysis).
 - (8) Feedback (customer and worker), lessons learned, and improvement activities. The Contractor will maintain an operating experience/lessons learned program that develops and evaluates site-specific lessons learned across all aspects of operations with a focus on preventing recurrence of problems.
- (d) The Contractor will benchmark, share and incorporate good work practices locally and among DOE sites through the DOE Lessons Learned Database. The Contractor will also provide feedback through the Sandia Field Office to the issuing authority for DOE Corporate Operating Experience Documents (i.e., Special Operations Reports (SORs), Safety Alerts (SAs), and Safety Bulletins (SBs)) when specific implementation of lessons learned or corrective actions with a formal response are required.
- (e) If the Contracting Officer determines that the Contractor is not fully complying with applicable laws or regulations, or that performance has degraded and that the Contractor is not taking appropriate and timely corrective action, the Contracting Officer may take any action deemed necessary and reasonable under the Contract include increasing performance monitoring of the Contractor.
- (f) NNSA will revise its performance monitoring in accordance with the Contract Clause entitled “NNSA Oversight” when the Contractor has demonstrated to the Contracting Officer’s satisfaction that the management system or components of the system are operating effectively.
- (g) The Contractor shall develop a Contractor Assurance System that is agreed to and monitored by the Field Office and contractor personnel. The Contractor’s Assurance System, at a minimum, shall have the following key attributes:
- (1) A comprehensive description of the Contractor Assurance System with risks, key activities and accountabilities clearly identified.
 - (2) A Process for notifying the Contracting Officer of significant assurance system changes.
 - (3) Rigorous, risk based credible self-assessments, feedback and improvement activities, including utilization of nationally recognized experts, and other

independent reviews to assess and improve its work process and to carry out independent risk and vulnerability studies. The Contractor is encouraged to seek third party certification (such as VPP and ISO 9001 or ISO 14001), audits, peer reviews and independent assessments with external certification or validation.

- (4) Identification and correction of negative performance/compliance trends before they become significant issues.
- (5) A method for validating assurance processes.
- (6) Integration of the assurance system with Contractor management systems including Integrated Safety Management.
- (7) A process for defining performance metrics and performance targets to assess performance, including benchmarking of key functional areas with other NNSA/DOE contractors and industry and research institutions to enhance processes and to assure development of performance metrics and performance targets that will result in achievement of best in class/industry performance where efficient and cost effective.
- (8) Continuous feedback and performance improvement.
- (9) A process capable of identifying, prioritizing, and addressing issues that will affect mission performance.
- (10) A process for timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

H-9 TRANSITION

The Laboratories' management systems that exist on the date of Contract award will continue until the Contractor addresses the applicable requirements contained in the Contract. For changes that require NNSA approval, the Contractor will not implement a change until it is formally approved by the Contracting Officer.

H-10 CONFERENCE MANAGEMENT (SEP 2015)

The Contractor agrees that:

- a) The contractor shall ensure that contractor-sponsored conferences reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the contractor will ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.

- b) For the purposes of this clause, “conference” is defined in Attachment 2 to the Deputy Secretary’s memorandum of August 17, 2015 entitled “Updated Guidance on Conference-Related Activities and Spending.” A copy of the memorandum may be found at <http://energy.gov/management/downloads/policy-flash-2015-36-al-2015-09>.
- c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:
 - 1) The contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:
 - i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
 - ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).
 - 2) The contractor authorizes use of its official seal, or other seals/logos/ trademarks to promote a conference. Exceptions include non-M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).
- d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.
- e) The contractor will provide information on conferences they plan to sponsor with expected costs exceeding \$100,000 in the Department’s Conference Management Tool, including:
 - 1) Conference title, description, and date
 - 2) Location and venue
 - 3) Description of any unusual expenses (e.g., promotional items)
 - 4) Description of contracting procedures used (e.g., competition for space/support)
 - 5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees)
 - 6) Number of attendees

- f) The contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed \$100,000 until notified of approval by the contracting officer.
- g) For DOE-sponsored conferences, the contractor will not expend funds on the proposed conference until notified by the contracting officer.
 - 1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/ trademarks to promote a conference. Exceptions include instances where DOE:
 - i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
 - ii) purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.
 - 2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.
 - 3) The contractor will provide cost and attendance information on their participation in all DOE-sponsored conference in the DOE Conference Management Tool.
- h) For *non-contractor sponsored conferences*, the contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:
 - 1) Track all conference expenses.
 - 2) Require the Laboratory Director (or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of \$100,000 or greater.
- i) Contractors are not required to enter information on non-sponsored conferences in DOE'S Conference Management Tool.
- j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than \$10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If a contractor does so, its expenditures for the conference may be deemed unallowable.

H-11 FEDERAL FLEET MANAGEMENT SYSTEM

When the Contracting Officer has issued the Contractor authorization to obtain interagency fleet management system vehicles in performance of the contract, the Contractor shall follow the requirement of the Federal Fleet Management System known as FedFMS (<http://www.gsa.gov/portal/category/100759>). The Contractor shall provide the information needed to satisfy the reporting requirement as stated in FedFMS on a monthly basis using the Fleet Management Information System. The Contractor shall also address any of the data gaps/incomplete records that already exist.

H-12 ACCOUNTABILITY

The Contractor is responsible for the quality of its products and services and for assessing its operations, programs, projects and business systems and identifying deficiencies and implementing needed improvements in accordance with the terms and conditions of this Contract, regardless of whether NNSA has evaluated the Contractor's performance in any area of the Contract. The Contractor is encouraged to collaborate with its corporate parent (as applicable) to ensure corporate leadership, the parent's systems, processes and independent assessments are used to assess the Contractor's performance. The purpose of NNSA oversight is for assessing the Contractor's performance in meeting its obligations under this Contract, in addition to measuring progress toward NNSA missions. The Contractor's accountability described in this clause is not reduced by the fact that NNSA conducts oversight activities.

H-13 NNSA OVERSIGHT

At all times during the term of this contract, NNSA will continue, preserve and maintain its right to determine the level of NNSA oversight of all Contractor activities under this Contract. In addition to the rights and remedies provided to the Government under provisions of this Contract, the Contractor shall fully cooperate with NNSA oversight personnel, NNSA subject matter experts in the performance of their assigned oversight functions and shall provide complete access to facilities, information, and Contractor personnel.

H-14 CLAUSE UPDATES AND IMPLEMENTATION SECTION TO FAR CLAUSES

(a) The Contractor agrees that the Contracting Officer may, from time to time and at any time, unilaterally modify the Contract to revise, add or delete Section H clauses, and FAR or DEAR clauses due to changes in the law or regulations or resulting from the approval of new deviations.

(b) The following Implementation of Section I Clauses applies:

(a) For purposes of implementation of Paragraph (d) of Contract Clause entitled "Accounts, Records, and Inspection" The parties agree that contractor official procurement file records are contractor-owned records. Associated official financial records that are stand alone, separate and apart from the official procurement file records remain government owned records.

(b) For the purposed Implementation of paragraph (b) (1) of the Contract Clause entitled “Access to and Ownership of Records,” the parties agree to the following:

(1) “Employee relations records” include records pertaining to qualifications or suitability for employment of any employee, applicant, or former employee, allegations, investigations, and resolution of employee misconduct, discipline, or charges of discrimination, negotiations, arbitration or grievance proceedings with any labor organization in connection with any labor contract, or affirmative action plane and related records.

(2) “Employee assistance program records” include psychological/psychiatric records and files maintained on individual employees, applicants, and former employees of the contractor.

(3) “Internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e. the contractor’s corporate headquarters) means records directly related to the operations of the Contractor’s Board of Directors and parent entity.

H-15 MANAGEMENT TEAM COSTS

Amounts of compensation reimbursed during the first two years of contract performance shall not exceed the proposed management team costs for any position, as reflected in Section L Attachment G “Management Team Cost Sheet” of the Contractor’s proposal in response to solicitation no. DE-SOL-0008470. For the remaining years of the Contract, the Key Personnel compensation will be reimbursed in accordance with the Statement of Work, Chapter III, paragraph 4.

H-16 CONFIDENTIALITY OF INFORMATION

(a) To the extent that the work under this Contract requires that the Contractor be given access to or be furnished with confidential or proprietary business, technical, or financial information or data belonging to other entities that is confidential or proprietary, the Contractor shall, after receipt thereof, treat such information in confidence and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized in writing by the Contracting Officer. Unless covered by other existing confidentiality requirements, the foregoing obligations shall not apply to:

(1) Information or data that is in the public domain at the time of receipt by the Contractor;

(2) Information or data that is published or otherwise subsequently becomes part of the public domain through no fault of the Contractor;

(3) Confidential or proprietary information or data owned by a third party that has expressly authorized unlimited distribution.

- (b) The Contractor agrees to enter into an agreement, identical in all material respects to the requirements of paragraph (a) above, with each entity supplying such confidential or proprietary information or data to the Contractor under this Contract and to supply a copy of such agreement to the Contracting Officer. Upon request of the Contracting Officer, the Contractor shall furnish the Government with reports that specify any information or data received as confidential or proprietary and that identify the entity or entities who supplied the Contractor with such information or data.
- (c) The Contractor shall obtain the written agreement of each employee permitted access to or furnished with confidential or proprietary business, technical, or financial information or data, whereby the employee agrees that such information or data that the Contractor is obligated to treat in confidence will not be discussed, divulged or disclosed except to those persons within the Contractor's organization directly concerned with the performance of this Contract or to Government representatives. Notwithstanding the foregoing Contractor-employee agreement, upon request of the Contracting Officer, the Contractor agrees to obtain from each employee a confidentiality agreement acceptable to the Contracting Officer.
- (d) This clause, including this paragraph (d) shall be included in subcontracts if there is a requirement or there becomes a requirement that the subcontractor be given access to or be furnished with confidential or proprietary business, technical, or financial information or data.

H-17 NNSA PRIME CONTRACTS

- (a) In accordance with the Contract's Section I Clause entitled "DEAR 970.5243-1, *"Changes,"* the Contracting Officer may identify any of the work contemplated by Section J, Appendix A, Statement of Work, of this Contract, or any other work, to be performed either by another contractor directly contracted by the NNSA or by Government employees. The Contractor agrees to provide site access to such other contractors and to accommodate, to cooperate and coordinate with, and to provide reasonable support to such contractors and/or Government employees as necessary and/or as directed by the Contracting Officer. The Contractor shall not commit or permit any act or omission which will interfere with the performance of work performed by any other contractor and/or by Government employees, and the Contractor shall be liable for any added costs resulting from such acts or omissions (such as delay costs) whether such costs are incurred by the Government, another contractor, or other parties. The following shall apply to work identified for performance by another contractor:
 - (1) The Government and the Contractor will confer in advance on the strategy for changing responsibility for the work and will do so with the objective of minimum disruption to the site operations.
 - (2) The Government may designate the Contractor as the Technical Monitor (not authorized to accept or provide technical direction) for such contracts that are directly related to the scope of this Contract. The Contractor agrees to perform

such monitoring duties as shall be further described in the designation for each such contract. No designation shall include, and the Contactor shall not perform any function determined to be inherently Governmental. These functions include, but are not limited to:

- (i) Award, modification, change, or termination of a Government contract.
 - (ii) Receipt, processing or adjudication of any claims, invoices, or demands for payment of any form.
- (3) The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer Representative (COR), any performance of a designated Contract that may not be in compliance with its terms and conditions but is not authorized to take any other action regarding such noncompliance.
- (4) Additionally, the NNSA agrees to insert the clause below entitled “*Other Government Contractors Performing Work at Sandia National Laboratories,*” substantially as written here, in all such contracts as follows:

OTHER GOVERNMENT CONTRACTORS PERFORMING WORK AT THE SNL

In addition to this Contract, (Insert Contract Number), the Government may undertake or award other contracts for additional work or services at any SNL sites. The Contractor agrees to fully cooperate with the M&O Contractor, other contractors, and Government employees, and carefully coordinate its own work with other work being performed at the site as necessary and/or as may be directed by the Contracting Officer. The contractor shall not commit or permit any act or omission which will interfere with the performance of work by any other contractor or by Government employees at the site, and the Contractor shall be liable for any added costs resulting from such acts or omissions (such as delay costs), whether such costs are incurred by the Government, another contractor, or other parties.

The Government may designate the M&O Contractor to be the Technical Monitor for any right, duty or interest in this Contract. If the M&O Contractor is designated, a copy of the designation letter will be provided to the Contractor by the Government. The Contractor further agrees to fully cooperate with the M&O Contractor for all matters under the terms of the designation.

- (b) Adjustments shall be made to the Contractor's Subcontracting Plan to recognize the changes to the subcontracting base and goals, if appropriate.

H-18 INSTRUCTIONS FOR UPDATING FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI) INFORMATION

- (a) In order to submit periodic updates or to report changes to Foreign Ownership, Control or Influence information as required by DEAR 952.204-2, *Security*, the

Contractor shall use the DOE FOCI electronic submission system located at [\https://foci.anl.gov.\](https://foci.anl.gov)

- (b) New users, when registering to update information under this contract, should select "NNSA Albuquerque Complex - Acquisition and Project Management (NA-APM)" as the FOCI Office that will review the FOCI Submission.
- (c) Electronic signatures are not accepted; all FOCI documentation/forms requiring signatures, dates, and company seal (if applicable), must be printed, completed, and uploaded under the Miscellaneous Tab within the e-FOCI system. NOTE: Hard copies of electronic FOCI submission package are no longer required, as indicated in the e-FOCI system. Specific problems maneuvering through the fields within the e-FOCI system can be clarified by contacting the e-FOCI help desk at (630) 252-6566 or fociserver@anl.gov.

H-19 CONTRACTOR EMPLOYEES

In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the NNSA 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-20 CONSTRUCTION PROJECTS

For Capital Construction Projects, the Contractor agrees that the NNSA will incorporate, as appropriate, construction terms and conditions into the M&O Contract or work authorization for the completion of that project that are not otherwise contained in the M&O Contract. The work authorization will also include specific work requirements in accordance with applicable DOE Orders and the Contract's Section I Clause entitled "DEAR 970.5211-1, *Work Authorization*."

The Contractor shall provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incidental to, the efficient, effective, and safe management and/or performance of Capital Projects as the Parties may agree.

- (a) Capital Construction Projects are defined for the purposes of this Contract as construction projects which are anticipated to exceed a total of \$10M for all design and construction costs.
- (b) The Contracting Officer may, in its sole discretion, direct the Contractor to manage and/or perform Capital Construction Projects, or any portion thereof, as they arise. The Parties shall establish by mutual agreement the price and applicable price structure (such as Firm Fixed Price, Cost-Plus Incentive-Fee, or other price structures

- as agreed) and any special terms and conditions which shall apply to each Capital Construction Project. The Contractor agrees to enter into good-faith negotiations with the Government to establish the price, price structure, and special terms and conditions which may apply to each Capital Construction Project. However, if the Parties cannot reach mutual agreement, the Contracting Officer may, within its sole discretion, (1) withdraw the direction to perform and/or manage a particular Capital Construction Project or (2) direct the Contractor to proceed with the performance and/or management of the Capital Construction Project in accordance with specified terms and conditions via a unilateral contract modification, in which case the Contractor shall be entitled to an equitable adjustment. If the Parties are unable to agree on an equitable adjustment, the matter shall be treated as a dispute under the Disputes Clause of this Contract and the Contractor shall diligently proceed with the performance or management of the Capital Construction Project pending the final outcome of the dispute.
- (c) Each Capital Construction Project which is authorized under this contract shall be identified via bilateral contract modification, to include SUB-CLINs, project title, contract type (such as Performance Based Incentive Fee or Firm-Fixed-Price), description of work, delivery schedule (to include major milestones and/or completion date), and associated terms and conditions necessary for the completion of a project and not otherwise contained in the Contract.
 - (d) Construction projects which are not Capital Projects, as defined herein, are within the scope of CLIN 0001 and shall be performed or managed by the Contractor as directed by the Government. Such construction projects may be assigned by Work Authorizations which may include construction-related clauses prescribed in the Federal Acquisition Regulation and/or the Department of Energy Acquisition Regulation in effect at the time of the issuance of the Work Authorization (if not already included in this Contract). The Contractor agrees to comply with such clauses.
 - (e) The Government reserves the right to have other contractors perform or manage any or all construction projects, including Capital Construction Projects, or any portion thereof at Sandia National Laboratories sites. The Contractor agrees to provide site access to such other contractors and to cooperate with, accommodate, and to provide such logistical support to such other contractors as needed and/or as directed by the Contracting Officer. Added project costs resulting from the Contractor's failure to cooperate with any such other contractors (such as delay costs), regardless of whether incurred by the Contractor or such other contractor(s) or by the Government, shall be borne by the Contractor and shall not be an allowable cost of this Contract. Activities conducted pursuant to this paragraph related costs are within the scope of CLIN 0001.

H-21 CONTRACTOR - MULTIYEAR STRATEGY FOR PERFORMANCE IMPROVEMENT

The Contractor shall develop a multi-year Sandia National Laboratories' Vision detailing its planned efforts and expected accomplishments by year to continuously improve its

management and operation of Sandia National Laboratories. The multi-year strategy shall also describe planned efforts (1) of the contributions of the corporate parent to improve site management and performance; (2) describe the contractor's approach to participation within, and coordination with, the NNSA Nuclear Security Enterprise (NSE); (3) describe how the contractor will enhance Contractor communications, cooperation and integration with the NSE with emphasis on NNSA laboratories, production facilities, and Strategic Partnership Projects; and, (4) describe how the contractor will contribute to overall improvements in the NSE performance. The Contractor shall submit its initial multi-year strategy at the end of the first year of performance. Subsequent annual updates shall be submitted to the Contracting Officer no later than June 15th of each year. Performance measures for these planned efforts and expected accomplishments may be considered for inclusion in the Contract.

H-22 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (SEP 2015)

(a) Definitions. As used in this clause only—

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect cost.

“M&O Subcontract Reporting Capability (MOSRC)” means a DOE system and associated processes to collect key information about M&O first-tier subcontracts for reporting to the Small Business Administration.

“Transaction” means any awarded contract, agreement, order, or modification, etc. (other than one involving an employer-employee relationship) entered into by a DOE M&O prime contractor calling for supplies and services (including construction) required solely for performance of the prime contract.

(b) Limited Interim Reporting.

The Contractor shall report no less than the twenty highest dollar value first-tier small business subcontract transactions under the contract by December 1 for the previous fiscal year until the Contractor business systems can report the required data as set forth in paragraph (c) below. Classified subcontracts shall be excluded from the reporting requirement and shall not be counted towards the total number of transactions of the reporting requirement.

- (1) Transactions with a corporation, company, or subdivision that is an affiliate of the Contractor are not included in these reports.
- (2) The Contractor shall provide the data on first-tier small business subcontract transactions under the contracts, as described in the MOSRC Guide via the Microsoft

Excel spreadsheet co-located at <https://max.gov> in the MOSRC Collaboration Center. The spreadsheet will be submitted to HQProcurementSystems@hq.doe.gov.

- (3) Full Reporting. The Contractor shall update their business systems and processes to collect and report data to MOSRC in compliance with the MOSRC Guide. The Contractor shall report data in MOSRC for FY18 (and each year thereafter) first-tier small business subcontracting transactions under the contract. Classified subcontracts shall be excluded from the reporting requirements. All Contractor systems shall be updated in order to provide the first FY18 report in November 2017 for October 2017 transactions.

H-23 INDIRECT COST MANAGEMENT

- (1) The Government has a fiduciary responsibility to ensure that taxpayer funds are spent appropriately. This clause provides for transparency with respect to indirect costs. Allowable cost shall be determined in accordance with FAR 52.216-7 “Allowable Cost and Payment” and as required herein.

(2) Indirect Rate Submissions:

- (a) The Contractor shall provide Indirect Rate Submissions to the Contracting Officer (CO) by August 1st of each year in order to establish billing rates in accordance with FAR 42.704 for the upcoming GFY.
- (b) Where there are advanced agreements on certain elements of indirect costs, the Contractor shall submit planned changes to the CO 30 days in advance of implementing the change.
- (c) The Contractor shall submit final annual indirect rate submission in accordance with FAR 52.216-7 “Allowable Cost and Payment JUN 2013” as modified by DEAR 952.216-7.

(3) Indirect Rate Submission

- (a) The Contractor shall provide a summary of how the indirect rates were derived including pool, base, and calculated indirect rate by major functions, activities, and elements of cost as identified in accounting records unless otherwise specified by the CO.
- (b) The submission shall provide the information required by FAR 52.216-7 (d) (iii) and (iv).
- (4) The Contractor shall brief NNSA stakeholders as determined by the CO concerning the composition of the indirect pools to ensure alignment with agency goals, priorities, and budgets. Additionally, the Contractor shall discuss the impact any resulting rate change will have on NNSA programs and projects.

(5) The NNSA and Contractor shall document any advanced agreements on items of particular interest within the indirect cost pools.

(6) The Contractor shall submit a summary level report covering all indirect cost pools by March 31st each year to the CO that provides an analysis of incurred cost to date, projected indirect costs to agreed-upon pools/bases for the current GFY, and a brief discussion of variances.

H-24 CONTRACTOR COMMUNITY COMMITMENTS

The Contract's Section J Appendix F – Diversity Plan section entitled “Community Involvement and Outreach” sets forth the Contractor's Community Commitment Plan consistent with the intent of DEAR 970.5226-3, “*Community Commitment*”. The plan shall describe the Contractor's planned activities as to how it will be a constructive partner to the communities in the State of New Mexico and California. The Contractor is encouraged to consider specific performance goals around maximizing subcontracting to businesses within New Mexico and Strategic Partnerships with New Mexico's system of higher education. All costs (direct or indirect) to be incurred by the Contractor in creating and executing the “Contractor Diversity Plan” are expressly unallowable and non-reimbursable under this Contract.

H-25 ASSET MANAGEMENT REQUIREMENTS

(a) Facilities Management Performance

(1) General

The minimum industry codes and standards for design and construction activities shall be as designated in applicable regulatory requirements (such as 10 CFR 851), and the applicable Directives in Contract Section J, Appendix B, List of Applicable Directives (such as DOE Order 420.1C). In addition to required codes and standards, NNSA Policy Letters shall also be used for the design and construction of nuclear facilities and accelerators.

(2) Site Facility Plan

The Contractor shall establish and maintain a Site Facility Plan that addresses the current condition of the Laboratories and future needs based on the strategic plan for the Laboratories. The Site Facility Plan shall be updated annually. The NNSA shall provide to the Contractor guidance for the preparation of the Site Facility Plan for which the Contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the Contractor shall prepare, and maintain through annual updates, the Site Facility Plan to reflect those actions necessary to keep the development of facilities current with the needs of the Government and allow the Contractor to successfully accomplish its mission in support of National Security. In developing this Site Facility Plan, the Contract shall follow the procedure guidance set forth in the applicable Directive in Contract Section J, Appendix B, List of Applicable Directives and NNSA

Policy Letters. The Contractor shall use the Site Facility Plan to manage and control the development of facilities and lands. The Site Facility Plan and any NNSA directed revisions to the Site Facility Plan shall be submitted to the Contracting Officer for review and approval by NNSA. The Contractor may periodically during the year update and revise the Site Facility Plan to reflect changing mission needs. Changes to planned projects between official updates of the Site Facility Plan and the related NNSA approvals shall be approved through the NNSA project authorization process.

(3) Project Management

All capital investments shall be managed and controlled by the Contractor in Accordance with the Project Execution Plan for each project.

(4) Real Property

Real property at the sites shall be acquired, operated, and disposed of in a manner to support the policies and standards established by DOE/NNSA. Each acquisition of real property, whether by lease or purchase or by any other means, requires the express written authorization of the Contracting Officer and a cognizant Certified Realty Specialist, and may require additional DOE/NNSA and/or Government approvals (e.g. OMB) as directed by the Contracting Officer.

The Contractor shall provide an “Annual Real Property Acquisition Plan” within the first quarter of each fiscal year. The Contractor’s processes for acquisition and disposal of Real Property must incorporate the NNSA supplemental guidance on real property acquisition and disposal, the U.S. Department of Energy Real Estate Desk Guide (Rev 2013)(or its successor), and all other applicable directives and policies as indicated in Contract Section J, Appendix B, List of Applicable Directives and NNSA Policy Letters.

(5) Operations and Maintenance

Facilities shall be operated and maintained in such a manner that they are fit for the intended use; promote operational safety; protect the environment, the workers, and the public; enhance the Laboratories’ missions; minimize the use of energy resources; and protect the Government’s capital investment.

(6) Utilities Acquisition and Management

Utility systems including without limitation electrical, water, natural gas, sewage, telecommunications, internet, and steam, unless furnished by the government, shall be acquired, operated, and maintained by the contractor to provide highly reliable and efficient systems.

(7) Resources Management

The Contractor shall manage the use of energy and water resources in a manner that minimizes consumption.

- (b) Subcontract Requirements. To the extent the Contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

H-26 STANDARDS MANAGEMENT

- (a) Benchmark with Industry. The Contractor shall regularly benchmark with industry to identify best commercial standards and best business practices that will improve site operations with the goal of improving performance effectively and efficiently without compromising Integrated Safety Management (ISM) and Integrated Safeguards and Security Management (ISSM).
- (b) Proposal of Alternative. Where best commercial standards or best business practices are identified that will improve site operations consistent with paragraph (a) above, the Contractor may, at any time during performance of this Contract, propose an alternative procedure, standard, or assessment mechanism (collectively referred to herein as “alternative”) for a Directive or DOE/NNSA requirement by submitting to the Contracting Officer a signed proposal(s) that describes (1) the nature and scope of alternative and Contractor system of oversight, (2) the anticipated benefits, including any cost benefits to be realized in performance under the Contract, (3) a schedule for implementation of the alternative is an effective, efficient means to meet the Directive without compromising ISM and ISSM, and (4) any additional information required by NNSA. NNSA will evaluate the Contractor’s proposal, and the Contractor will not implement a proposed change until it is formally approved by the NNSA and communicated to the Contractor by the Contractor Officer.
- (c) Deficiency and Remedial Action. If, during performance of this Contract, NNSA determines that a previously approved alternative is not satisfactory, the Contracting Officer will require the Contractor to prepare a corrective action to be taken, and, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the Directive or DOE/NNSA requirement.
- (d) Law and Regulations Exempted. The process described in this clause shall not affect the Application of otherwise applicable laws and regulations of the United States, including DOE regulations.

H-27 STRATEGIC PURCHASING

- (a) The Contractor shall participate with NNSA and other NNSA contractors as part of an “enterprise organization” taking advantage of the many benefits that can be achieved through strategic purchasing. Strategic purchasing can result in better pricing, better products, more timely delivery, reduced administrative costs and lead times for both the contractor and the NNSA, greater standardization and interchangeability across the NNSA complex, and increased award to small business entities.
- (b) The Contractor shall cooperate with NNSA and other NNSA contractors in identifying requirements under this Contract that are suitable for strategic purchasing

and shall facilitate the identification of work to be directly acquired by NNSA to support the objectives discussed below. The Contractor shall use the contracting vehicles identified by the NNSA as strategic purchases and those awarded by the Integrated Contractor Purchasing Team (ICPT) to meet all suitable requirements under this Contract unless the cost of using such contracting vehicles is shown to be excessive, does not provide the best value and or impacts the Contractor's schedule. The Contractor may propose alternative acquisition strategies to the Contracting Officer.

H-28 UTILIZATION OF PARENT CORPORATE SYSTEMS

If the Contractor, in the interest of efficiency and effectiveness of business operations, decides to adopt or adapt its parent corporate systems or services, it will ensure that the Government and Contractor's data in such systems is readily transferable to a successor contractor.

H-29 PERFORMANCE BASED MANAGEMENT SYSTEMS

This Contract is a management and operating performance-based contract, which holds the Contractor accountable for performance. This Contract uses performance measures as described in Contract Clause entitled "Leadership Performance Evaluation."

H-30 BUSINESS ENTITY – FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER (FFRDC)

The Contractor shall operate and manage Sandia National Laboratories consistent with Federal Acquisition Regulation (FAR) Subpart 35.017, and have as its sole purpose the management and operation of Sandia National Laboratories. Accordingly, the Contractor will establish and maintain its own system of policies and procedures related to the management and operation of the Laboratories, which is consistent with the terms of this Contract, DOE Directives, regulations and practices.

H-31 IMPLEMENTATION OF ITER AGREEMENT ANNEX ON INFORMATION AND INTELLECTUAL PROPERTY

- (a) Contractor agrees to be subject to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the ITER Agreement) as it applies to intellectual property, as follows: specifically, and without limitation, subject inventions and data produced in the performance of this contract and subcontracts related to the ITER project are subject to the license rights and other obligations provided for in the ITER Agreement's Annex on Information and Intellectual Property.
- (b) Background intellectual property of the Contractor, as defined in the Annex, is also subject to the provisions of the ITER Agreement. In particular and under certain circumstances, Contractor shall use its best efforts to identify Background Intellectual property (including patents and data) and grant a nonexclusive license in certain Background Intellectual Property to the parties to the ITER Agreement (Members)

- for commercial fusion use. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE.
- (c) Further, intellectual property generated by Contractor employees who are designated as seconded staff to the ITER organization shall be owned by the ITER Organization and the Contractor gets no rights to such intellectual property except those rights provided the Contractor by the Government as a result of the Government being a member of the ITER Organization. Contractor agrees that Contractor employee agreements will be suitably modified as necessary to effectuate this provision and that employees will be required to execute a separate secondary agreement with the ITER Organization.
 - (d) The Government may provide to each ITER Member, as defined in the ITER Agreement, the right, for non-commercial uses, to translate, reproduce, and publicly distribute data produced in the performance of this contract. Contractor will deliver, at a minimum, to DOE, copies of all ITER-related peer-reviewed manuscripts provided to scientific and technical journal publishers which may then be distributed to Members in accordance with the ITER Agreement. Contractor agrees that the ITER Organization may impose a different delivery requirement in order to be in compliant with this paragraph and that, if so, Contractor agrees that this paragraph may be suitably modified to be in accordance with the ITER Agreement.
 - (e) Contractor shall include the ITER patent and data rights clauses transmitted to the Contractor from the U.S. ITER Project Office, suitably modified to identify the parties, in all subcontracts related to ITER, at any tier, for experimental, developmental, demonstration or research work and in subcontracts in which technical data or computer software is expected to be produced or in subcontracts that contain a requirement for production or delivery of data.

H-32 PERFORMANCE OF WORK AT FACILITIES AND SITES OTHER THAN SANDIA NATIONAL LABORATORIES

In performance of the Contract's work at facilities and sites other than SNL, the Contractor shall comply with applicable requirements set forth in this Contract's Appendix B entitled "List of Applicable Directives and NNSA policy letters," and any additional directives which have been established for the NNSA Prime Contractor at that facility/site that are applicable to the Contractor's work being performed and that are applicable to the associated hazards at the particular facility or site.

H-33 ADVANCE UNDERSTANDING REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS

Allowable costs under this Contract shall be determined according to the requirements of the Contract's Section I clause entitled "*Payments and Advances.*" For purposes of effective Contract implementation, certain general types of cost are being specifically identified below as allowable (to the extent reasonable and allocable to the contract and in accordance with other applicable requirements and limitations) and/or unallowable under this Contract to the extent indicated:

(a) ITEMS OF ALLOWABLE COSTS:

- (1) Personnel costs in accordance with Appendix A attached to this Contract.

(b) ITEMS OF UNALLOWABLE COSTS:

- (1) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
- (2) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically provided in the Contract or specifically agreed to in writing by the Contracting Officer.
- (3) Facilities capital cost of money for the Contractor including its “teaming arrangement” as defined in FAR 9.601.
- (4) Meals, snacks, refreshment and catering services, except as otherwise specifically agreed to in writing by the Contracting Officer.
- (5) Compensation of a Senior Executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy, are unallowable.
- (6) Costs that are unallowable under other contract terms shall not be allowable as compensation for personnel services.

H-34 INTELLECTUAL AND SCIENTIFIC FREEDOM

- (a) The Parties recognize the importance of fostering an atmosphere at the Laboratories conducive to scientific inquiry and the development of new knowledge and creative and innovate ideas related to important national interests.
- (b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratories and colleagues at universities, colleges and other laboratories or scientific facilities is vital to the success of the scientific, engineering, and technical work performed by Laboratory personnel.
- (c) In order to further the goals of the Laboratories and the national interest, it is agreed by the Parties that the scientific and engineering personnel at the Laboratories shall be accorded the rights of publication or other dissemination of research, and participation in open debate and in scientific, educational, or professional meetings or conferences, subject to the limitations included in technology transfer agreements and such other limitations to related to the obligations of the Parties to protect classified and unclassified controlled nuclear information or other sensitive or confidential information, as provided by law, regulations, DOE/NNSA directives or policies, this contract, or other applicable requirements or agreements.

H-35 CONTRACTOR PERFORMANCE EVALUATIONS

In accordance with Federal Acquisition Regulation (FAR) Subpart 42.15, the NNSA will prepare and submit past performance evaluations to the Past Performance Information Retrieval System (PPIRS). Evaluation reports will be documented not later than 120 days after the end of an evaluation period by using the Contractor Performance Assessment Reporting System (CPARS) which has connectivity with PPIRS. Contractor must register in CPARS in order to view/comment on their performance reports.

SECTION I - CONTRACT CLAUSES

A. FAR CLAUSES INCORPORATED BY REFERENCE

The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1). The following FAR clauses are hereby incorporated by reference:

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.203-3	Gratuities	Apr 1984
52.203-5	Covenant Against Contingent Fees	May 2014
52.203-6	Restrictions on Subcontractor Sales to the Government	Sep 2006
52.203-7	Anti-Kickback Procedures	May 2014
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	May 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	May 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	Oct 2010
52.203-13	Contractor Code of Business Ethics and Conduct	Oct 2015
52.203-14	Display of Hotline Poster(s) <i>(b)(3) Required poster is: 'DOE Hotline Poster http://energy.gov/ig/downloads/office-inspector-general-hotline-poster'</i>	Oct 2015
52.203-16	Preventing Personal Conflicts of Interest	Dec 2011
52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights	Apr 2014
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	May 2011
52.204-7	System for Award Management	Jul 2013
52.204-9	Personal Identity Verification of Contractor Personnel	Jan 2011
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	Oct 2015
52.204-12	Data Universal Numbering System Number Maintenance	Dec 2012
52.204-13	System for Award Management Maintenance	Jul 2013
52.204-18	Commercial and Government Entity Code Maintenance	Jul 2013

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	Oct 2015
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	Jul 2013
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations	Nov 2015
52.210-1	Market Research	Apr 2011
52.211-5	Material Requirements	Aug 2000
52.211-15	Defense Priority and Allocation Requirement	Apr 2008
52.215-2	Audit and Records – Negotiation	Oct 2010
52.215-8	Order of Precedence – Uniform Contract Format	Oct 1997
52.215-12	Subcontractor Certified Cost or Pricing Data	Oct 2010
52.215-13	Subcontractor Certified Cost or Pricing Data Modifications	Oct 2010
52.215-15	Pension Adjustments and Asset Reversions	Oct 2010
52.215-17	Waiver of Facilities Capital Cost of Money	Oct 1997
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	Jul 2015
52.215-19	Notification of Ownership Changes	Oct 1997
52.215-22	Limitations on Pass-Through Charges – Identification of Subcontract Effort	Oct 2009
52.215-23	Limitations on Pass-Through Charges	Oct 2009
52.217-8	Option to Extend Services (a) 30 days	Nov 1999
52.219-8	Utilization of Small Business Concerns	Oct 2014
52.219-9	Small Business Subcontracting Plan, Alt II Oct 2001	Oct 2015
52.219-16	Liquidated Damages – Subcontracting Plan	Jan 1999
52.222-1	Notice to the Government of Labor Disputes	Feb 1997
52.222-2	Payment for Overtime Premiums (a) "0"	Jul 1999
52.222-3	Convict Labor	Jun 2003

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	May 2014
52.222-21	Prohibition on Segregated Facilities	Apr 2015
52.222-26	Equal Opportunity	Apr 2015
52.222-29	Notification of Visa Denial	Apr 2015
52.222-35	Equal Opportunity for Veterans	Oct 2015
52.222-36	Equal Opportunity for Workers with Disabilities	Jul 2014
52.222-37	Employment Reports on Veterans	Feb 2016
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	Dec 2010
52.222-50	Combating Trafficking in Persons	Mar 2015
52.222-54	Employment Eligibility Verification	Oct 2015
52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction FAR Contracts	Sep 2013
52.223-5	Pollution Prevention and Right-to-Know Information, Alternate I (May 2011)	May 2011
52.223-6	Drug Free Workplace	May 2011
52.223-10	Waste Reduction Program	May 2011
52.223-12	Refrigeration Equipment and Air Conditioners	May 1995
52.223-13	Acquisition of EPEAT® -Registered Imaging Equipment Alt I Jun 2014 <i>(b) was EPEAT® silver-registered or gold-registered</i>	Jun 2014
52.223-15	Energy Efficiency in Energy-Consuming Products	Dec 2007
52.223-16	Acquisition of EPEAT® -Registered Personal Computer Products Alt I (Jun 2014) <i>(b) were EPEAT® silver-registered or gold-registered</i>	Oct 2015
52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts	May 2008
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	Aug 2011
52.223-19	Compliance With Environmental Management Systems	May 2011

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.224-1	Privacy Act Notification	Apr 1984
52.224-2	Privacy Act	Apr 1984
52.225-1	Buy American—Supplies (d) “use” is replaced with the word “deliver”	May 2014
52.225-8	Duty-Free Entry	Oct 2010
52.225-13	Restriction on Certain Foreign Purchases	Jun 2008
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	Jun 2000
52.227-1	Authorization and Consent Alt I (Apr 1984)	Dec 2007
52.227-10	Filing of Patent Applications – Classified Subject Matter	Dec 2007
52.227-23	Rights to Proposal Data (Technical)	Jun 1987
52.230-2	Cost Accounting Standards	Oct 2015
52.230-6	Administration of Cost Accounting Standards	Jun 2010
52.232-17	Interest	May 2014
52.232-18	Availability of Funds	Apr 1984
52.232-24	Prohibition on Assignment of Claims	Apr 1984
52.232-39	Unenforceability of Unauthorized Obligations	Jun 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	Dec 2013
52.233-1	Disputes, Alternate I (Dec 1991)	May 2014
52.233-3	Protest After Award, Alternate I (Jun 1985)	Aug 1996
52.233-4	Applicable Law for Breach of Contract Claim	Oct 2004
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	Apr 1984
52.237-3	Continuity of Services	Jan 1991
52.237-11	Accepting and Dispensing of \$1 Coin	Sep 2008
52.239-1	Privacy and Security Safeguards	Aug 1996
52.242-1	Notice of Intent to Disallow Costs	Apr 1984
52.242-3	Penalties for Unallowable Costs	May 2014

FAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
52.242-13	Bankruptcy	Jul 1995
52.244-5	Competition in Subcontracting	Dec 1996
52.244-6	Subcontracts for Commercial Items	Feb 2016
52.247-1	Commercial Bill of Lading Notations <i>(a) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'.</i> <i>(b) Specific agency is 'U.S. Department of Energy, National Nuclear Security Administration'. Contract No. is "TBD".</i> <i>Contact is 'the Contracting Officer'.</i>	Feb 2006
52.247-63	Preference for U.S.-Flag Air Carriers	Jun 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	Feb 2006
52.249-14	Excusable Delays	Apr 1984
52.251-1	Government Supply Sources	Apr 2012
52.251-2	Interagency Fleet Management System Vehicles and Related Services	Jan 1991
52.253-1	Computer Generated Forms	Jan 1991

B. DEAR CLAUSES INCORPORATED BY REFERENCE

The references cited herein are from the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9). The following DEAR clauses are hereby incorporated by reference:

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
952.203-70	Whistleblower Protection for Contractor Employees	Dec 2000
952.204-70	Classification/Declassification	Sep 1997
952.204-71	Sensitive Foreign Nations Controls	Mar 2011
952.204-75	Public Affairs	Dec 2000
952.204-77	Computer Security	Aug 2006
952.208-7	Tagging of Leased Vehicles	Apr 1984

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
952.209-72	Organizational Conflicts of Interest, Alternate I <i>(b) (1) (i) Period is 'five (5) years'.</i>	Aug 2009
952.211-71	Priorities and Allocations (ATOMIC ENERGY)	Apr 2008
952.215-70	Key Personnel <i>(a) Cross-reference is 'Section J, Appendix D.'</i>	Dec 2000
952.217-70	Acquisition of Real Property	Mar 2011
952.223-75	Preservation of Individual Occupational Radiation Exposure Records	Apr 1984
952.226-74	Displaced Employee Hiring Preference	Jun 1997
952.235-71	Research Misconduct	Jul 2005
952.242-70	Technical Direction	Dec 2000
952.247-70	Foreign Travel	Jun 2010
952.251-70	Contractor Employee Travel Discounts	Aug 2009
970.5203-1	Management Controls	Jun 2007
970.5203-2	Performance Improvement and Collaboration	May 2006
970.5204-1	Counterintelligence	Dec 2010
970.5208-1	Printing	Dec 2000
970.5211-1	Work Authorization	May 2007
970.5217-1	Strategic Partnership Projects Program (Non-DOE Funded Work)	Apr 2015
970.5222-1	Collective Bargaining Agreements-Management and Operating Contracts	Dec 2000
970.5222-2	Overtime Management	Dec 2000
970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution <i>(Apr 2016) PROPOSED DEVIATION – remove “970.2303-3(b)” replace with “970.2303-3(a)”</i>	Dec 2000
970.5223-4	Workplace Substance Abuse Programs at DOE sites	Dec 2010
970.5223-6	Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management	Oct 2010
970.5223-7	Sustainable Acquisition Program	Oct 2010

DEAR NUMBER	CLAUSE TITLE <i>(Any insertions appear below the title in italics)</i>	DATE OF CLAUSE
970.5225-1	Compliance with Export Control Laws and Regulations (Export Clause)	Nov 2015
970.5226-1	Diversity Plan	Dec 2000
970.5226-2	Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	Dec 2000
970.5226-3	Community Commitment	Dec 2000
970.5227-4	Authorization and Consent	Aug 2002
970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement	Dec 2000
970.5227-6	Patent Indemnity-Subcontracts	Dec 2000
970.5227-8	Refund of Royalties	Aug 2002
970.5228-1	Insurance-Litigation and Claims	Jul 2013
970.5229-1	State and Local Taxes	Dec 2000
970.5232-1	Reduction or Suspension of Advance, Partial, or Progress Payments	Dec 2000
970.5232-3	Accounts, Records and Inspection	Dec 2010
970.5232-4	Obligation of Funds	Dec 2000
970.5232-5	Liability with Respect to Cost Accounting Standards	Dec 2000
970.5232-6	Strategic Partnership Project Funding Authorization	Apr 2015
970.5232-7	Financial Management System	Dec 2000
970.5232-8	Integrated Accounting	Dec 2000
970.5235-1	Federally Funded Research and Development Center Sponsoring Agreement	Dec 2010
970.5236-1	Government Facility Subcontract Approval	Dec 2000
970.5242-1	Penalties for Unallowable Costs	Aug 2009
970.5243-1	Changes	Dec 2000

C. FAR AND DEAR CLAUSES INCORPORATED IN FULL TEXT

I-1 FAR 52.202-1 DEFINITIONS (NOV 2013) (AS MODIFIED BY DEAR 952.202-1)

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-

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; when a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies; or
- (d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

I-2 FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2014)

(a) Definitions.

“Bureau of Land Management,” as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

“Federal helium supplier” means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office’s Authorized List of Federal Helium Suppliers available via the Internet at http://www.blm.gov/nm/st/en/fo/Amarillo_Field_Office.html

“Major helium requirement” means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) Requirements --

(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier --

- (i) The name of the supplier;
- (ii) The amount of helium purchased;
- (iii) The delivery date(s); and
- (iv) The location where the helium was used.

(c) *Subcontracts* --The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

I-3 FAR 52.216-7 ALLOWABLE COST AND PAYMENT (JUN 2013) (AS MODIFIED BY DEAR 952.216-7)

(a) *Invoicing*. * This paragraph only applies to the transition term.

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

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

(3) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) *Reimbursing costs*.

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

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

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

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

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

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

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

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

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

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

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

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

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

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

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

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

(d) *Final indirect cost rates.*

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

(2)

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

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

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Occupancy expenses (intermediate indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.

- (H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.
- (I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.
- (J) *Subcontract information.* Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).
- (K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.
- (L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.
- (M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.
- (N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).
- (O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).
- (iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:
- (A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.
- (B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at http://www.whitehouse.gov/omb/procurement_index_exec_comp/.
- (C) Identification of prime contracts under which the contractor performs as a subcontractor.
- (D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

- (E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changes from the previous year's submission).
 - (F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, etc.).
 - (G) Management letter from outside CPAs concerning any internal control weaknesses.
 - (H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.
 - (I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.
 - (J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.
 - (K) Federal and State income tax returns.
 - (L) Securities and Exchange Commission 10-K annual report.
 - (M) Minutes from board of directors meetings.
 - (N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.
 - (O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.
 - (v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this sections, within 60 days after settlement of final indirect cost rates.
- (3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify
- (i) the agreed-upon final annual indirect cost rates,
 - (ii) the bases to which the rates apply,
 - (iii) the periods for which the rates apply,

- (iv) any specific indirect cost items treated as direct costs in the settlement, and
- (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

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

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

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)

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

(A) Determine the amounts due to the Contractor under the contract; and

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

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

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

(1) Shall be the anticipated final rates; and

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

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

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

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

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.*

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

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --

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

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

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

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

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

I-4 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days of contract expiration; 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 10 years and four months.

I-5 FAR 52.219-10 INCENTIVE SUBCONTRACTING PROGRAM (OCT 2014)

- (a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.
- (b) If the Contractor exceeds its subcontracting goals for those socio-economic identified by the Contracting Officer that may include: small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantage business, and women-owned small business concerns in performing this contract, it will receive a percentage (Contracting Officer to insert the appropriate number between) and up-to-7%) of the dollars in excess of the selected goal(s) in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated amount in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations made under this paragraph are unilateral decisions made solely at the discretion of the Government.
- (c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in 15.404-1 of the Federal Acquisition Regulation.
- (d) The Contracting Office will provide the Contractor with written guidance identifying and establishing the socio-economic program(s) and goal(s) annually per DEAR Subpart 970.1907-4. The Contracting Office will include, as a minimum, the following information: (1) the socio-economic programs(s) to be incentivized, (2) goal percentages, (3) a maximum dollar threshold that can be earned for each incentivized socio-economic program and, (4) a maximum dollar threshold that can be earned overall.

I-6 FAR 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	Identification No.
<i>To be determined*</i>	

* This information will be provided upon award of the contract

(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-7 FAR 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).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

(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.

(End of Clause)

I-8 FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS (MAY 2008)

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

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

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

(b) The Contractor, on completion of this contract, shall—

- (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of postconsumer material content; and
- (2) Submit this estimate to the Contracting Officer.

(End of Clause)

I-9 FAR 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).

(End of Clause)

I-10 FAR 52.223-14 ACQUISITION OF EPEAT® -REGISTERED TELEVISIONS (JUN 2014)

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

“Television or TV” means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with

computer capability (e.g., computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

- (b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.
- (c) For information about EPEAT®, see www.epa.gov/epeat.

(End of Clause)

**I-11 FAR 52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS AND
COMPENSATING TAX (APR 2003) (AS MODIFIED BY DEAR 970.2904-1(A))**

- (a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.
- (b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Payments and Advances clause of this contract except as provided in paragraph (d) of this clause.
- (c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the:

State of New Mexico Taxation and Revenue Dept.
Revenue Division
PO Box 630
Santa Fe, New Mexico 87509

When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the (* _____) and the New Mexico Taxation and Revenue Department.

- (d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

- (e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
- (f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.
- (g) The (*_____) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (*_____), may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the (*_____) to represent its Contractor.
- (h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.
- (i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

[* Insert appropriate agency name in blanks.]

(End of Clause)

**I-12 FAR 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—**the Contracting Officer.** (End of Clause)

I-13 FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004) (AS MODIFIED BY DEAR 970.4905-1)

(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.

(End of Clause)

I-14 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address (es):

<u>Federal Acquisition Regulation</u>	http://farsite.hill.af.mil/vffara.htm or https://www.acquisition.gov/far/index.html
<u>Federal Acquisition Forms</u>	http://www.gsa.gov/portal/forms/type/TOP
<u>Department of Energy Acquisition Regulation</u>	http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation http://farsite.hill.af.mil/vfdoea.htm http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=ccc3d607ed1811c91460147ec7521076&mc=true&r=PART&n=pt48.5.952 or http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=ccc3d607ed1811c91460147ec7521076&mc=true&r=PART&n=pt48.5.970

I-15 FAR 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 Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

(End of Clauses)

I-16 DEAR 952.204-2 SECURITY (MARCH 2011) CLASS DEVIATION (OCT 2013) (APR 2016) PROPOSED DEVIATION

- (a) *Responsibility.* It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material 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 classification levels and categories of matter proposed for retention, the reasons for the retention, 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 classified 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 contract requirements of DOE as incorporated into the contract.
- (c) *Definition of Classified Information.* The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended, or prior executive orders, which is identified as *National Security Information*.
- (d) *Definition of Restricted Data.* The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) *Definition of Formerly Restricted Data.* The term "*Formerly Restricted Data*" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information-- (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(f) *Definition of National Security Information.* The term "*National Security Information*" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

(g) *Definition of Special Nuclear Material.* The term "*special nuclear material*" means-- (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] 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) *Access authorizations of personnel.*

(1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

(2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.

(i) A review must-- verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.

(ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those-- (A) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (B) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

(iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

(v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

(vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:

- A. The date(s) each Review was conducted;
- B. Each entity that provided information concerning the individual;
- C. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;
- D. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and
- E. The results of the test for illegal drugs.

(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 protect any classified information, special nuclear material, or other Government property 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, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

(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 Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. The Contractor will submit Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. When completed the Contractor must print and sign one copy of the SF328 and submit it to the Contracting Officer. 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. Contractors are encouraged to submit this information through the use of the online tool at <https://foci.td.anl.gov>. When completed the Contractor must print and sign one copy of the SF 328 and submit it 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 protect any classified information or special nuclear material.

(4) 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 foreign ownership, control, or influence 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 foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

(k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access

authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(l) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance 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.

I-17 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996) (APR 2016) PROPOSED DEVIATION

- (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 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
- (2) The public liability referred to in subparagraph (d) (1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this

contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

- (e) (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 therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers

received by the Contractor or filed with respect to such actions 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 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 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 II below for instructions related to this section on Effective Date.

Relationship to general indemnity

() See Note III below for instructions related to this section on Relationship to General Indemnity.

NOTE I: Paragraph (i) of the clause will be replaced with "Reserved" in contracts specifically exempted from civil penalties by section 234 of the Act. That subsection provides that the following DOE contractors are not subject to the assessment of civil penalties:

- (1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;
- (2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;
- (3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;
- (4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;
- (5) Princeton University (and any subcontractor or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;
- (6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and
- (7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

NOTE II: Contracts with an effective date after the date of (June 12, 1996), do not require the effective date provision in this clause. Delete the title. Use the EFFECTIVE DATE title and the following language, for those contracts: "() This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after ..."

- (1) Those that contained an indemnity pursuant to Public Law 85-840 prior to August 20, 1988, include the effective date provision above, inserting the effective date of the contract modification that replaced the Public Law 85-804 indemnity with an interim Price-Anderson based indemnity. Pursuant to the Price-Anderson Amendments Act, this substitution must have taken place by February 20, 1989.
- (2) Those that contained, and continue to contain, either of the previous Nuclear Hazards Indemnity clauses, include the effective date provision above, inserting "August 20, 1988."
- (3) Those with an effective date between August 20, 1988, and the date of the Final Rule, that (a) had "interim coverage" or (b) did not have "interim coverage" but have now

been determined to be covered under the PAAA, include the effective date provision above, inserting the contract effective date.

NOTE III: 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."

I-18 DEAR 952.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000) (CLASS DEVIATION)

- (a) Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer (1) 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; *and, (2) a chart showing the name and organization of the Contractor's Parent Organization's responsible official for administering the Contractor's Parent Organization's Oversight Plan, 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. *For purposes of this contract, the [insert name or title of resident supervisory representative of the contractor] is the resident supervisory representative of the contractor.*
- (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 Administrator of the NNSA or 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. *Furthermore, nothing contained in this paragraph (c) shall in any way impair the statutory or contractual collective bargaining rights of union-represented contractor employees.*

- (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.
- (e) *Nothing in this clause or its implementation is intended to conflict with 42 U.S.C. §7274p, or to otherwise affect the scientific integrity of persons required to provide independent technical judgments to provide the President or the Congress assurances on the safety, security, reliability, or effectiveness of the US nuclear weapons stockpile.*

(End of Clause)

**I-19 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)
(CLASS DEVIATION)**

- (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.
- (b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, *and National Nuclear Security Administration Policy Letters* identified in the *contract's Section J Appendix entitled "List of Applicable Directives" (the List)*. Except as otherwise provided for in paragraph (d) of this clause, the Contracting Officer may, from time to time and at any time, revise *the List* by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising *the List*, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise *the List* 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 *the List* and so advise the Contractor not later than 30 days prior to the effective date of the revision of *the List*. 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 *the List and fee may be adjusted* 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 *the List* 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 *the* List. 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.

(End of Clause)

I-20 DEAR 970.5204-3 ACCESS AND OWNERSHIP (CLASS DEVIATION)

(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, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 CFR, Chapter XII, Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "Privacy Act."

(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, excluding records operated and maintained in DOE Privacy Act system of records].

(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, excluding records operated and maintained by the Contractor in Privacy Act system of records. Employee-related systems of record may include, but are not limited to: Employee Relations Records (DOE-3), Personnel Records of Former Contractor Employees (DOE-5), Payroll and Leave Records (DOE-13), Report of Compensation (DOE-14), Personnel Medical Records (DOE-33), Employee Assistance Program (EAP) Records (DOE-34) and Personnel Radiation Exposure Records (DOE-35).

(2) Confidential contractor financial information, internal corporate governance records 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 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.* Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, 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. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(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.* This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) *Records maintenance and retention.* Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 CFR Chapter XII, Subchapter B, “Records Management” and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) *Subcontracts.* The contractor shall include the requirements of this clause in all subcontracts that contain the *Integration of Environment, Safety and Health into Work Planning and Execution* clause at 952.223-71 or, the *Radiation Protection and Nuclear Criticality* clause at 952.223-72.

(End of clause)

I-21 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES—FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALTERNATE II (AUG 2009) (NNSA CLASS DEVIATION OCT 2011) (APR 2016) PROPOSED DEVIATION

(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, 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% nor greater than 100% 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% nor greater than 25% for a second degree performance failure, and up to 10% 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 225.1B, or successor version)).
 - (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 225.1B, or successor version)).
 - (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 Manual 231.1-2 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, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

- (2) **Second Degree:** Performance failures that have been determined, in accordance with applicable 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.

(End of Clause)

**I-22 DEAR 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER (DEC 2000)
ALTERNATE I (DEC 2000) (NSA CLASS DEVIATION OCT 2011)**

(a) Definitions.

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

- (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.
- (8) *Open Source Software, as used in this clause, means computer software that is distributed under a license in which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).*
- (9) *Patent Counsel means the National Nuclear Security Administration (NNSA) Patent Counsel assisting the DOE/NNSA contracting activity.*

(b) Allocation of Rights.

- (1) *Except as may be otherwise expressly provided or directed in writing by the Patent Counsel 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, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE/NNSA, appropriate instances of the DOE /NNSA 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/NNSA 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 (h) of this clause ("Rights in Limited Rights Data") or paragraph (i) 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/NNSA 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/NNSA 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 provisions of this clause;
- (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 and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology, provided the data requirements of this Contract have been met as of the date of the private use of such data; and
- (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

- (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, NNSA or a third party, including a DOE or NNSA contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE/NNSA, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General).

- (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

- (2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this 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 (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data 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 data prior to its delivery.

(d) Copyrighted works (scientific and technical articles)

- (1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
- (2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy/*National Nuclear Security Administration*. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

- (3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE and NNSA to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

- (e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

- (i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:
 - (A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes,
 - (B) The program under which it was funded,
 - (C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement,
 - (D) Whether the data is subject to export control,
 - (E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and
 - (F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's and NNSA's dissemination responsibilities.
- (ii) For data that is developed using other funding sources in addition to DOE *or* NNSA funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.
- (iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE/NNSA will be expressly withheld. Such excepted categories include data whose release

- (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes,
 - (B) would not enhance the appropriate transfer or dissemination and commercialization of such data,
 - (C) would have a negative impact on U.S. industrial competitiveness,
 - (D) would prevent DOE *or* NNSA from meeting its obligations under treaties and international agreements, or
 - (E) would be detrimental to one or more of DOE's *or* NNSA's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property *and/or the NNSA Patent Counsel*. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE *or* NNSA may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.
- (2) DOE/NNSA Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE/NNSA's permission for the Contractor to assert copyright or advise the Contractor that DOE/NNSA needs additional time to respond, and the reasons therefor.
- (3) Permission for Contractor to Assert Copyright.
- (i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

- (A) An abstract describing the software suitable for publication,
- (B) the source code for each software program, and
- (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software.

The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE/NNSA designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

- (ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e) (2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, NNSA, and its contractors and to the public identifying its availability from the copyright holder.
- (iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE/NNSA approval. The DOE/NNSA approval will be based on the standard that the work is still commercially available and the market demand is being met.
- (iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.
- (v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or

deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by (insert name of Contractor) under Contract No. (insert contract number) with the Department of Energy/*National Nuclear Security Administration*. For (period approved by NNSA Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE/NNSA. Neither the United States nor the United States Department of Energy/*National Nuclear Security Administration*, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of Notice)

- (vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE/NNSA has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e)(3)(iii) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE/NNSA determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE/NNSA shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE/NNSA to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 --"Appeals."
- (vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE or NNSA Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

- (4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the *DOE/NNSA* to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy/*National Nuclear Security Administration* (DOE/NNSA). All rights in the computer software are reserved by DOE/NNSA on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public.

NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of Notice)

- (5) A similar notice can be used for data, other than computer software, upon approval of Patent Counsel.
- (f) *Open Source Software. The Contractor may release computer software first produced by the Contractor in the performance of this Contract under an open source software license. Such software shall hereinafter be referred to as Open Source Software or OSS, subject to the following:*

- (1) *Obtain Program Approval.*

(i) *The Contractor shall ensure that the DOE or NNSA Program or Programs that have provided funding (Funding Source) to develop the software have approved the distribution of the software as OSS. The funding Program(s) may provide blanket approval for all software developed with funding from that Program. However, OSS release for any one such software shall be subject to approval by all other funding Programs which provide a substantial portion of the funds for the software, if any. If approval from the funding Program(s) is not practicable, Patent Counsel may provide approval instead. For software jointly developed under a CRADA or User Facility, or SPP, authorization from the CRADA Participant(s) or User Facility User(s), or SPP, as applicable, shall be additionally obtained for OSS release.*

(ii) *If the software is developed with funding from a federal government agency or agencies other than DOE or NNSA, then authorization from all the funding*

source(s) shall be obtained for OSS release, if practicable. Such federal government agency (ies) may provide blanket approval for all software developed with funding from that agency. However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If majority approval from such federal government agency(s) is not practicable, Patent Counsel may provide approval instead.

- (2) *Assert Copyright in the OSS. Once the Contractor has obtained Funding Source approval in accordance with subparagraph (1) of this section, copyright in the software to be distributed as OSS, may be asserted by the Contractor, or, for OSS developed under a CRADA or User Facility, or SPP, either by the Contractor, CRADA Participant, or User FacilityUser, or SPP, as applicable, which precludes marking such OSS as Protected Information.*
- (3) *Form DOE F 241.4 for OSS to ESTSC. The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE or NNSA) to DOE's Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.*
- (4) *OSS Record. The Contractor must maintain a record, available for inspection by DOE or NNSA, of software distributed as OSS. The record shall contain the following information: (i) name of the computer software (or other identifier), (ii) an abstract with description or purpose of the software, (iii) evidence of the funding Program's or source's approval, (iv) the planned or actual OSS location on the Contractor's webpage or other publicly available location (see subparagraph (5) below); (v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered; (vi) the type of OSS license used; and (vii) release version of the software for OSS containing derivative works. Upon request of Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the record.*
- (5) *Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible as an open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, NNSA, or other industry standard means.*
- (6) *Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property and/or NNSA Patent Counsel may periodically issue guidance on OSS licenses. Each Contractor created OSS license, must contain, at a minimum, the following provisions:*
 - (i) *A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and*
 - (ii) *A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (10) below). This provision might allow the licensee and third parties to commercialize their*

derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.

- (7) *Collection of administrative costs is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.*
- (8) *Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled Technology Transfer Mission (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties as set forth elsewhere in this clause is not modified by this section.*
- (9) *Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews of the derivative versions.*
- (10) *Determine if Trademark Protection for the OSS is Appropriate. DOE and NNSA Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the Program or the Contractor may want to seek trademark protection. If the OSS is protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.*
- (11) *Government License. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.*
- (12) *Availability of Original OSS. The object code and source code of the original OSS developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is publicly available. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.*

(g) 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 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 Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 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/NNSA.
 - (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 and restricted computer software for their private use.
- (h) 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 below. 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. *(insert contract number)* with the United States Department of Energy/*National Nuclear Security Administration* 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)

(i) 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/*National Nuclear Security Administration* Contract No. *(insert contract*

number). 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 in lieu thereof:

Restricted Rights Notice --Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE/NSA Contract No. (*insert contract number*) 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."
- (j) 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.

(End of Clause)

**I-23 DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002)
ALTERNATE II (DEC 2000) (NSA CLASS DEVIATION OCT 2011)**

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority.

- (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Facilities, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Facilities consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended ([15 U.S.C. 3710a](#)); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of Chapter 38 of the Patent Laws ([35 U.S.C. 200 et seq.](#)); Section 152 of the Atomic Energy Act of 1954, as amended ([42 U.S.C. 2182](#)); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 ([42 U.S.C. 5908](#)); and Executive Order 12591 of April 10, 1987.
- (2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Facilities; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Facilities that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Strategic Partnership Projects (SPP) ; providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, SPP, science education activities,

consulting, personnel *exchanges*, assignments, and licensing in accordance with this clause.

- (3) *Nothing in this, or any other section of this contract provides the Contractor with any property right, including the right to license, in data first produced in the performance of this contract, except as expressly provided in the contract or approved in writing by the Contracting Officer.*

(b) Definitions.

- (1) Contractor's Facilities Director means the individual who has supervision over all or substantially all of the Contractor's operations at the facilities.
- (2) Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.
- (3) Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Facilities, and one or more parties including at least one non-Federal party under which the Government, through its Facilities, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Facilities; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.
- (4) Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Facilities Director or designee which describes the following:
 - (i) Purpose;
 - (ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;
 - (iii) Schedule for the work; and
 - (iv) Cost and resource contributions of the parties associated with the work and the schedule.
- (5) Assignment means any agreement by which the Contractor transfers ownership of Facilities' Intellectual Property, subject to the Government's retained rights.

- (6) *Facilities' Biological Materials* means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by *Facilities'* employees or through the use of *Facilities' research resources*.
 - (7) *Facilities' Tangible Research Product* means tangible material results of research which
 - (i) Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;
 - (ii) Are not materials generally commercially available; and
 - (iii) Were made under this contract by *Facilities'* employees or through the use of *Facilities' research resources*.
 - (8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of *Facilities' Biological Materials* or *Facilities' Tangible Research Product* for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.
 - (9) *Privately funded technology transfer* means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.
- (c) Allowable Costs.
- (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended ([15 U.S.C. 3710](#)). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Strategic Partnership Projects) of the *Facilities* for that fiscal year without written approval of the contracting officer.

- (2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance -- Litigation and Claims" of this contract.
- (d) Conflicts of Interest -- Technology Transfer. The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to all persons participating in *the Facilities* research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:
- (1) Inform employees of and require conformance with standards of conduct and integrity in connection with *research involving nonfederal sponsors and for CRADA* activity in accordance with the provisions of paragraph (n) (5) of this clause;
 - (2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;
 - (3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE *and NNSA* projects and programs;
 - (4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;
 - (5) Conduct DOE- *and NNSA*-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;
 - (6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE *or NNSA* or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;
 - (7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;
 - (8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a *Facilities* employee within the previous two years or to the company in which the individual is a principal;
 - (9) Notify non-Federal sponsors of SPP activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of SPPs or user agreements; *and*

- (10) Notify NNSA prior to the Contractor's acting in an advisory role for evaluation of a technical proposal for funding by a third party or a DOE or NNSA Program, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.
- (e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Facilities and by entities other than the Contractor.
- (f) U.S. Industrial Competitiveness.
- (1) In the interest of enhancing U.S. Industrial Competitiveness in its licensing and assignments of Intellectual Property, *the Contractor shall* give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its *decisions involving* licensing or assignment of Facilities' intellectual property where the Contractor obtains rights during the course of the Contractor's operation of the Facilities under this contract:
- (i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or
 - (ii) (A) whether a proposed licensee or an assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and
 - (B) in licensing or assigning any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights; and
 - (C) *if the proposed licensee, assignee, or parent of either type of entity is subject to the control of a foreign company or government, the Contractor, with the assistance of the Contracting Officer, in considering the factors set forth in paragraph (B) herein, may rely upon the following information; (1) U.S. Trade Representative Inventory of Foreign Trade Barriers, (2) U.S. Trade Representative Special 301 Report, and, (3) such other relevant information available to the contracting officer. The Contractor should review the U.S. Trade Representative web site at: <http://www.ustr.gov> for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a*

complete and informed decision.

- (2) If the Contractor determines that neither of the conditions in paragraphs (f) (1)(i) or (ii) of this clause is likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.
 - (3) The Contractor agrees to be bound by the provisions of [35 U.S.C. 204](#) (Preference for United States industry).
- (g) Indemnity -- Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.
- (h) Disposition of Income.
- (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the *Facilities*, consistent with the research and development mission and objectives of the *Facilities* and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended ([15 U.S.C. 3710a\(b\)\(5\)](#)) and Chapter 38 of the Patent Laws ([35 U.S.C. 200](#) et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the *Facilities*' budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.
 - (2) The Contractor shall include as a part of its annual *Facilities* Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the *Facilities*, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

- (3) The Contractor shall *notify* the Contracting Officer of any changes to its policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer. *Such changes shall be subject to the approval of the Contracting Officer.*
- (i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Facilities shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Facilities, to the successor contractor or to the Government as directed by the contracting officer.
- (j) Technology Transfer Affecting the National Security.
- (1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act ([42 U.S.C. 2168](#)). Such notification shall include sufficient information to enable NNSA to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE/NNSA's nuclear weapon production complex. NNSA shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and NNSA shall promptly notify the Contractor as to whether the technology is transferable.
- (2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.
- (3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.
- (k) Records. The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE/NNSA and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer to enable DOE/NNSA to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended ([15 U.S.C. 3710a\(c\)\(6\)](#)). Such reports shall be made annually in a format to be agreed upon

between the Contractor and DOE/NNSA and in such a format which will serve to adequately inform DOE/NNSA of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

- (l) Reports to Congress. To facilitate DOE/NNSA's reporting to Congress, the Contractor is required to submit annually to DOE/NNSA a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Facilities innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.
- (m) Oversight and Appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Facilities Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.
- (n) Technology Transfer through Cooperative Research and Development Agreements. Upon approval of the contracting officer and as provided in a NNSA-approved Joint Work Statement (JWS), the Facilities Director, or designee, may enter into CRADAs on behalf of the DOE/NNSA subject to the requirements set forth in this paragraph. *Also, under such circumstances as DOE or NNSA considers appropriate, the DOE or NNSA may waive the following requirements associated with the submission and approval of JWS and CRADA agreements, as legislated by the 2001 National Defense Authorization Act.*
 - (1) Review and Approval of CRADAs.
 - (i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's Facilities Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.
 - (ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.
 - (iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's Facilities Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

- (iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter.
- (2) Selection of Participants. The Contractor's Facilities Director or designee in deciding what CRADA to enter into shall:
- (i) Give special consideration to small business firms, and consortia involving small business firms;
 - (ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;
 - (iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and
 - (iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.
- (3) Withholding of Data.
- (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended ([15 U.S.C. 3710a\(c\)\(7\)](#)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE/NNSA shall cooperate with the Contractor in protecting such data.
 - (ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE *or* NNSA facilities for use by DOE/NNSA or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.
 - (iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the

Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) Strategic Partnership Projects and User Facility Programs.

- (i) Strategic Partnership Projects (SPP) and User Facility Agreements (UFAs) *are* available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, who are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith, *when conditions associated with the activity under the agreement can appropriately be performed under such alternative agreement(s).*
- (ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.
- (iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE/NNSA approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE/NNSA class waiver (including Strategic Partnership Projects and User Class Waivers) or individually negotiated waiver that applies to the agreement.

(5) Conflicts of Interest.

- (i) Except as provided in paragraph (n) (5) (iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:
 - (A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee –
 - (1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

- (2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or
 - (B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.
- (ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.
- (iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.
- (o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(End of Clause)
- (p) Technology Partnership Ombudsman.
 - (1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the *Facilities*, and technology licensing.
 - (2) The Ombudsman shall be a senior official of the Contractor's *Facilities* staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the *Facilities*, shall function as such senior official.

- (3) The duties of the Technology Partnership Ombudsman shall include:
- (i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the Facilities regarding technology partnerships, patents, and technology licensing;
 - (ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and
 - (iii) Submitting a quarterly report, in a format provided by DOE *and* NNSA, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.
- (q) *Inapplicability of Provisions to Privately Funded Technology Transfer Activities. Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity -- Product Liability, (h) Disposition of Income, and (item 7) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.*

I-24 DEAR 970.5227-2 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (AUG 2002) ALTERNATE I (NNSA CLASS DEVIATION OCT 2011)

(a) Definitions.

- (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.
- (3) Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).
- (4) 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.).
- (5) Made, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

- (6) Patent Counsel means *the National Nuclear Security Administration (NNSA) Patent Counsel* assisting the contracting activity.
- (7) 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.
- (8) 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.
- (9) Weapons-Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) Allocation of Principal Rights.

- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b) (2) of this clause or a determination of greater rights pursuant to subparagraph (b) (7) 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) Advance class waiver of Government rights to the Contractor. DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, *including weapons-related subject inventions*, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. *The Contractor does not have a right to retain title to any weapons-related subject inventions prior to being granted title by NNSA under the Class Waiver. In its elections of weapons-related subject inventions, the NNSA alone will make the determination that the subject invention is in fact a weapons-related subject invention, and that rights to the Contractor may be granted, based on specific procedural requirements that the Contractor must meet, as enumerated in the Class Waiver.* Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b) (3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

- (3) Government license. With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b) (2) or a determination of greater rights pursuant to subparagraph (b) (7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- (4) 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/NNSA, and DOE/NNSA may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (5) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b) (7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.
 - (i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:
 - (A) uranium enrichment technology;
 - (B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and
 - (C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).
 - (ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:
 - (A) DOE Steel Initiative and Metals Initiative;
 - (B) U.S. Advanced Battery Consortium;
 - (C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI);
 - (D) *Solid State Energy Conversion Alliance (SECA) if the Contractor is a participant in the "Core Technology Program"; and*
 - (E) *Solid State Lighting Program (SSLP) if the Contractor is a participant in the "Core Technology Program."*

- (iii) DOE/NNSA reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE/NNSA exceptional circumstance subject inventions.
- (6) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements *identified at*<http://www.state.gov/s/l/treaty/index.htm>Treaty Affairs

DOE/NNSA reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

- (7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE/NNSA pursuant to subparagraph (c)(1) 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/NNSA may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b) (3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE/NNSA, and DOE/NNSA may grant or refuse to grant such a request by the Contractor employee-inventor.
- (9) Government assignment of rights in Government employees' subject inventions. If a DOE or NNSA employee is a joint inventor of a subject invention to which the Contractor has rights, DOE or NNSA, *as applicable*, may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE or NNSA employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the

Government license provided for in subparagraph (b) (3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE *or* NNSA employee.

- (10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor.

- (1) 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 an inventor discloses it in writing to Contractor personnel responsible for patent matters 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/NNSA 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 is an exceptional circumstance subject invention, 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/NNSA under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

- (2) Publication after disclosure. After disclosure of the subject invention to the DOE/NNSA, 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. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.
- (3) Election by the Contractor under an advance class waiver. If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE/NNSA within two (2) years of the date of the disclosure of the subject invention to DOE/NNSA, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE/NNSA to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.
- (4) Filing of patent applications by the Contractor under an advance class waiver. If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under 35 U.S.C. 102(b), whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.
- (5) Submission of patent information and documents. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:

- (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
 - (ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
 - (iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.
 - (6) Contractor's request for an extension of time. Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c) (1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE/NNSA.
 - (7) 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 Part 40.
- (d) Conditions When the Government May Obtain Title notwithstanding an Advance Class Waiver.
- (1) Return of title to a subject invention. If the Contractor requests that DOE/NNSA acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b) (2) or subparagraph (b) (7) of this clause, DOE/NNSA may acquire such title or rights from the Contractor, or DOE/NNSA may decide against acquiring such title or rights from the Contractor, at DOE/NNSA's sole discretion.
 - (2) Failure to disclose or elect to retain title. Title vests in DOE/NNSA and DOE/NNSA may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.
 - (3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE/NNSA's written request for title, the Contractor continues to retain title in that country.
 - (4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or

the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA.

- (5) Termination of advance class waiver. DOE/NNSA may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE/NNSA, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(e) Minimum Rights of the Contractor.

- (1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c) (1) 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/NNSA may grant or refuse to grant such a request by the Contractor. If DOE/NNSA 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.
- (2) Transfer of a Contractor license. DOE/NNSA shall approve any transfer of the Contractor's license in a subject invention, and DOE/NNSA may determine that the Contractor's license is non-transferable, on a case-by-case basis.
- (3) Revocation or modification of a Contractor license. DOE/NNSA 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/NNSA licensing regulations. DOE/NNSA may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE/NNSA 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.
- (4) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE/NNSA 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/NNSA 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/NNSA licensing regulations.

(f) Contractor Action to Protect the Government's Interest.

- (1) Execution and delivery of title or license instruments. The Contractor agrees to execute or have executed, and to deliver promptly to DOE *or* NNSA all instruments necessary to accomplish the following actions:
 - (i) establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;
 - (ii) convey title in a subject invention to DOE/NNSA pursuant to subparagraph (b) (5) and paragraph (d) of this clause; or
 - (iii) enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.
- (2) 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) (1) 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.
- (3) Contractor procedures for reporting subject inventions to DOE/NNSA. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE/NNSA. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.
- (4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.
- (5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of

Energy/*National Nuclear Security Administration*. The Government has certain rights in the invention."

- (6) Avoidance of Royalty Charges. If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.
- (7) DOE/NNSA approval of assignment of rights. Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE/NNSA.
- (8) Small business firm licensees. The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.
- (9) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) 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 and subparagraph (b)(5) of this clause.
- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations or small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13,

suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.

- (4) DOE/NNSA and subcontractor contract. With respect to subcontracts at any tier, DOE/NNSA, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE/NNSA with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of 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 refusal and including 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.
- (h) Reporting on Utilization of Subject Inventions. Upon request by DOE *or* NNSA, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE *or* NNSA. Upon request by DOE *or* NNSA, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE *or* NNSA, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE *and* NNSA agree not to disclose such information to persons outside the Government, to the extent permitted by law.
- (i) Preference for United States Industry. Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured

substantially in the United States. However, in individual cases, DOE *or* NNSA may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) **March-In Rights.** With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE *or* NNSA may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE/NNSA has the right to grant such a license itself if DOE/NNSA determines that-

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
- (4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) **Communications.** The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

(l) **Reports.**

- (1) **Interim reports.** Upon DOE's *or* NNSA's request, the Contractor shall submit to DOE *or* NNSA, no more frequently than annually, a list of subject inventions disclosed to DOE/NNSA 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/NNSA in accordance with the requirements of subparagraphs (f) (3) and (f) (4) of this clause.
- (2) **Final reports.** Upon DOE's *or* NNSA's request, the Contractor shall submit to DOE *or* NNSA, 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.

(m) 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.

(n) 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 (o)(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.

(o) 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.
- (p) 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, including exceptional circumstance 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/NNSA, and the Contracting Officer believes the unreported invention may be a subject invention, DOE *or* NNSA may require the Contractor to submit to DOE *or* NNSA 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.
 - (4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE *or* NNSA, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.
- (q) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE/NNSA 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.
- (r) Educational Awards Subject to 35 U.S.C. 212. The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b) (6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.
- (s) Annual Appraisal by NNSA Patent Counsel. NNSA Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE *and* NNSA policy.

- (t) *Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE or NNSA or the Contractor, timely notification of the release of scientific and technical publications shall be provided to the Contractor personnel responsible for patent matters. Contractor delivery of this data and information to the Patent Counsel shall be considered met if the required data and information is entered into an appropriate database of listed publications and the Patent Counsel has "read-only" access to the database. A copy of this data and information must be made available to the Contracting Officer upon request.*
- (u) **Termination of Contractor's Advance Class Waiver.** If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE or NNSA relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE or NNSA shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

(End of clause)

**I-25 DEAR 970.5231-4 PRE EXISTING CONDITIONS (DEC 2000) ALTERNATE I
(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 [Insert date contract began]. 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 [Insert date contract began], 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.

(End of clause)

Alternate I (DEC 2000). As prescribed in 970.3170 (a), in contracts with incumbent management and operating contractors, substitute the following for paragraph (a) of the basic clause:

(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 [Insert name of facility], shall be deemed incurred under Contract No. [Insert number of prior contract].

Alternate II (DEC 2000). As prescribed in 970.3170 (b), add the following paragraph (c) to the basic clause in contracts with management and operating contractors not previously working at that particular site or facility:

(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.

(End of Clause)

I-26 DEAR 970.5232-2 PAYMENT AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000) ALTERNATE III (DEC 2000) (NNSA CLASS DEVIATION OCT 2011)

- (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-G. 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/NNSA'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, 48 CFR 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.

(End of Clause)

I-27 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (JAN 2013) CLASS DEVIATION JUN2013/MAR2015) (APR 2016) PROPOSED DEVIATION

(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 subpart 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (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 subpart 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 31.205-26(e).

(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 \$150,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$150,000, 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 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$500,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at \$500,000 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.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.

(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 subpart 8.11 and 48 CFR subpart 908.11.

(n) [Reserved]

(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 subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 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 subpart 8.5
 - (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 versus Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus 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).*
- (7) *Nondisplacement of Qualified Workers clause prescribed by 48 CFR 22.1207.*
- (8) *Service Contract Reporting clause prescribed in 48 CFR 4.1705.*
- (9) *Minimum Wages under Executive Order 13658 clause prescribed in 48 CFR 22.1906*

(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.

(End of Clause)

I-28 DEAR 970.5245-1 PROPERTY (JAN 2013) (APR 2016) PROPOSED DEVIATION

(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 (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national

security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) *Risk of loss of Government property.* (1)(i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i) (1) of this clause.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f) (1) of this clause is not allowable.

(g) *Steps to be taken in event of loss.* In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor —

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only.* Government property shall be used only for the performance of this contract.

(i) *Property Management—(1) Property Management System.* (i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and 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) [Reserved]

(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.

Alternate I (DEC 2000). As prescribed in 970.4501-1(b), when the award is to a nonprofit contractor, replace paragraph (j) of the basic clause with the following paragraph (j):

(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 all or substantially all of—

(1) The Contractor's business; or

(2) The Contractor's operations at any one facility or separate location at which this contract is being performed; or

(3) The Contractor's Government property system and/or a Major System Project as defined in DOE Order 413.3B or successor version (Version in effect on effective date of contract).

SECTION J – List of Attachments

Attachment A – Statement of Work (SOW)
Attachment B – List of Applicable Directives and NNSA Policy Letters
Attachment C – Personnel Appendix
Attachment D - Key Personnel
Attachment E - Small Business Subcontracting Plan
Attachment F - Diversity Plan
Attachment G – Special Financial Agreement
Attachment H – ITER Agreement
Attachment I – Performance Guarantee
Attachment J – Transition Plan
Attachment K – Program Management and Cost Reports

SECTION K – Representations, Certifications and other statements of offeror**K-1 FAR 52.204-8, ANNUAL REPRESENTATIONS AND CERTIFICATIONS (FEB 2016)**

- (a)
 - (1) The North American Industry classification System (NAICS) code for this acquisition is **561210 Government Base Facilities Operation Support Services**.
 - (2) The small business size standard is **\$38,500,000**.
 - (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (b)
 - (1) If the clause at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.
 - (2) If the provision at 52.204-7 is not included in this solicitation, and the offeror is currently registered in the System for Award Management (SAM), and has completed the Representations and Certifications section of SAM electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certification in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:
 - ☐ (i) Paragraph (d) applies.
 - ☐ (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.
- (c)
 - (1) The following representations or certifications in SAM are applicable to this solicitation as indicated:
 - (i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—
 - (A) The acquisition is to be made under the simplified acquisition procedures in Part 13;
 - (B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or
 - (C) The solicitation is for utility services for which rates are set by law or regulation.
 - (ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

- (iii) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the clause at 52.204-7, System for Award Management.
- (iv) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—
 - (A) Are not set aside for small business concerns;
 - (B) Exceed the simplified acquisition threshold; and
 - (C) Are for contracts that will be performed in the United States or its outlying areas.
- (v) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation. This provision applies to solicitations using funds appropriated in fiscal years 2008, 2009, or 2010.
- (vi) 52.209-5; Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.
- (vii) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.
- (viii) 52.214-14, Place of Performance--Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.
- (ix) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.
- (x) 52.219-1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.
 - (A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.
 - (B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.
- (xi) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

- (xii) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.
- (xiii) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.
- (xiv) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.
- (xv) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
- (xvi) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA- designated items.
- (xvii) 52.225-2, Buy American Act Certificate. This provision applies to solicitations containing the clause at 52.225-1.
- (xviii) 52.225-4, Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at 52.225- 3.
 - (A) If the acquisition value is less than \$25,000, the basic provision applies.
 - (B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.
 - (C) If the acquisition value is \$50,000 or more but is less than \$67,826, the provision with its Alternate II applies.
- (xix) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.
- (xx) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan--Certification. This provision applies to all solicitations.
- (xxi) 52.225-25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification. This provision applies to all solicitations.
- (xxii) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to—

- (A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and
 - (B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
- (2) The following certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

 - ☐ (i) 52.219-22, Small Disadvantaged Business Status.
 - ☐ (A) Basic.
 - ☐ (B) Alternate I.
 - ☐ (ii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.
 - ☐ (iii) 52.222-48, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
 - ☐ (iv) 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services--Certification.
 - ☐ (v) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).
 - ☒ (vi) 52.227-6, Royalty Information.
 - ☒ (A) Basic.
 - ☒ (B) Alternate I.
 - ☒ (vii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.
- (d) The offeror has completed the annual representations and certifications electronically via the SAM Web site accessed through <https://www.acquisition.gov> . After reviewing the SAM database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below *[offeror to*

insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

(End of Provision)

K-2 FAR 52.204-16 COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING (JUL 2015)

(a) Definition. As used in this provision—

“Commercial and Government (CAGE) code” means--

- (1) An identified assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Contractor and Government Entity (CAGE) Branch to identify a commercial or Government entity; or
 - (2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Contractor and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as an NCAGE code
- (b) The Offeror shall enter its CAGE code in its offer with its name and address or otherwise include it prominently in its proposal. The CAGE code entered must be for that name and address. Enter “CAGE” before the number. The CAGE code is required prior to award.
- (c) CAGE codes may be obtained via –
- (1) Registration in the system for Award management (SAM) at www.sam.gov. If the Offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Contractor and Government Entity (CAGE) Branch will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas shall obtain a NCAGE code prior to registration in SAM (see paragraph (c) (3) of this provision).

- (2) The DLA Contractor and Government Entity (CAGE) Branch. If registration in SAM is not required for the subject procurement, and the offeror does not otherwise register in SAM, an offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at <https://www.logisticsinformationservice.dla.mil/>.
- (3) The appropriate country codification bureau. Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA if the foreign entity's country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus and NSPA, as well as additional information on obtaining NCAGE codes, are available at <http://www.dlis.dla.mil/nato/ObtainCAGE.asp>.
- (d) Additional guidance for establishing and maintaining CAGE codes is available at http://www.dlis.dla.mil/cage_welcome.asp.
- (e) When a CAGE Code is required for the immediate owner and/or the highest-level owner by 52.204-17 or 52.212-3(p), the Offeror shall obtain the respective CAGE Code from that entity to supply the CAGE Code to the Government.
- (f) Do not delay submission of the offer pending receipt of a CAGE code.

(End of Provision)

K-3 FAR 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS (JUL 2013)

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

“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceeding at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“Federal contracts and grants with total value greater than \$10,000,000” means—

- (1) The total value of all current, active contracts and grants, including all priced options; and
- (2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

“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 division or business segment; and similar positions).

- (b) The offeror [] has [] does not have current active Federal contracts and grants with total value greater than \$10,000,000.
- (c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:
 - (1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:
 - (i) In a criminal proceeding, a conviction.
 - (ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
 - (iii) In an administrative proceeding, a finding of fault and liability that results in—
 - (A) The payment of a monetary fine or penalty of \$5,000 or more; or
 - (B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.
 - (iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.
 - (2) If the offeror has been involved in the last five years in any of the occurrences listed in (c) (1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.
- (d) The offeror shall post the information in paragraphs (c) (1) (i) through (c) (1) (iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management database via <https://www.acquisition.gov> (see 52.204-7).

(End of Provision)

K-4 FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (OCT 2015)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. Disclosure Statement -- Cost Accounting Practices and Certification

- (a) Any contract in excess of \$750,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.
- (b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

- (c) Check the appropriate box below:

- ☐ (1) *Certificate of Concurrent Submission of Disclosure Statement.* The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:
 - (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and
 - (ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____ Name and Address
of Cognizant ACO or Federal Official Where Filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

- ☐ (2) *Certificate of Previously Submitted Disclosure Statement.* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____ Name and Address of
Cognizant ACO or Federal Official Where Filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

- ☐ (3) *Certificate of Monetary Exemption.* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

- ☐ (4) *Certificate of Interim Exemption.* The offeror hereby certifies that

- (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and
- (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c) (1) or (c) (2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period

may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards -- Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ yes ☐ no

(End of Provision)

K-5 FAR 52.230-7 PROPOSAL DISCLOSURE—COST ACCOUNTING PRACTICE CHANGES (APR 2005)

The offeror shall check “yes” below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

☐ Yes ☐ No

If the offeror checked “Yes” above, the offeror shall--

- (1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and
- (2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

(End of Provision)

K-6 DEAR 952.204-73 FACILITY CLEARANCE (MAR 2011) (APR 2016) PROPOSED DEVIATION

NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328

- (1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the Contractor must submit the SF328, Certificate Pertaining to Foreign Interests, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package. The Contractor will submit the Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. . When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.
- (2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.
- (3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written

notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. 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 must also be furnished concurrently to the cognizant security office.

(b) Definitions

- (1) Foreign Interest means any of the following-
 - (i) A foreign government, foreign government agency, or representative of a foreign government;
 - (ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
 - (iii) Any person who is not a citizen or national of the United States.
- (2) Foreign Ownership, Control, or Influence (FOCI) means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.
- (c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon-
 - (1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;
 - (2) A contract or proposed contract containing the appropriate security clauses;
 - (3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

- (4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;
 - (5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;
 - (6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and
 - (7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.
- (d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.
- (e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.
- (f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

NOTICE TO OFFERORS-CONTENTS REVIEW

(PLEASE REVIEW BEFORE SUBMITTING)

Prior to submitting the Standard Form 328, required by paragraph (a) (1) of this clause, the offeror should review the FOCI submission to ensure that:

- (1) The Standard Form 328 has been signed and dated by an authorized official of the company;
- (2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
- (3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;
- (4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and,
- (5) A summary FOCI data sheet.

NOTE: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

(End of provision)

**K-7 DEAR 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST
DISCLOSURE-ADVISORY AND ASSISTANCE SERVICES (JUN1997) (NSA
CLASS DEVIATION OCT 2011)**

- (a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- (b) *The offeror shall provide the statement described in paragraph (c) of this provision as an Exhibit to this Section K.*
- (c) The statement must contain the following:
 - (1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the

statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work. *For any actual or significant potential organizational conflict of interest, the offeror shall also submit a plan of actions/activities to avoid, neutralize, or mitigate such conflict.*

- (2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.
- (d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

K-8 DEAR 970.5223-3 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)

- (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. DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5(g).
- (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.

(End of Provision)

K-9 DEAR 970.5227-7 ROYALTY INFORMATION (DEC 2000)

- (a) Cost or charges for royalties. If the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

- (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price of contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties.
- (b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

(End of Provision)

K-10 DEAR 970.5227-9 NOTICE OF RIGHT TO REQUEST PATENT WAIVER (DEC 2000)

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract, in advance of or within 30 days after the effective date of the contract. If such advance waiver is not requested or the request is denied, the Contractor has a continuing right under the contract to request a waiver of the rights of the Government in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Contractors that are domestic small businesses and domestic nonprofit organizations may not need a waiver and will have included in their contracts a patent clause reflecting their right to elect title to subject inventions pursuant to the Bayh-Dole Act (35 U.S.C. 200 et seq.).

(End of Provision)

CERTIFICATE PERTAINING TO FOREIGN INTERESTS

With regard to the Contract's Section K Provision DEAR 952.204-73, *Facility Clearance*, the offeror is required to complete all applicable FOCI disclosure forms provided in Attachment A, *Foreign Ownership, Control or Influence (FOCI) Package*, which includes a Standard Form 328 - *Certificate Pertaining to Foreign Interests*. If the offeror has an approved facility clearance, the offeror should identify: (1) its DOE Facility Code (or DOE CAGE Code, if applicable); (2) the date the Offeror's completed Standard Form 328 was submitted; and (3) the date of the Contracting Officer's affirmative FOCI determination.

SIGNATURE/CERTIFICATION

By signing below, the offeror certifies, under penalty of law, that the representations and certifications herein are accurate, current, and complete. The offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Signature of the Officer or Employee
Responsible for the Offer

Date of Execution

Typed Name and Title of the Officer or Employee
Responsible for the Offer

Name of Organization

Address

City, State, ZIP

ATTACHMENT A – FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI) PACKAGE

Standard Form 328 - Certificate Pertaining To Foreign Interests

CONTENTS REVIEW REQUIRED BY THE OFFEROR

Section 836 of the Fiscal Year 1993 Defense Authorization Act (Pub. L. 102-484) prohibits the award of a Department of Energy contract under the national security program to an entity owned or controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the Contract. The Secretary of Energy may determine that a waiver from this requirement is essential to the National Security interests of the United States.

Prior to forwarding a FOCI submission to DOE, the offeror shall review the FOCI documentation to ensure that:

1. If the offeror is owned by a parent organization(s), the Certificates Pertaining to Foreign Interests Standard Form 328 (REV 6/2008) have been attached for all tier parents, i.e., ultimate parent and any intervening levels of ownership. Each certification must be signed and dated by an authorized official of the respective organization. [i.e., a person authorized to represent and sign for the organization as officially recorded by the organization (that is, in the document which sets forth the terms & conditions for its operation & management by laws, operating agreement, partnership agreement, etc.)]

In addition to the executed Certificates Pertaining to Foreign Interests Standard Form 328 (REV6/2008), an offeror/bidder and, if applicable, its tier parents shall also submit the following to the Contracting Officer:

1. A copy of the U.S. company's articles of incorporation and an attested copy of the U.S. company's by-laws, or similar documents filed for the U.S. company's existence and management, and all amendments to those documents. NOTE: A contractor with a DOE approved facility clearance and, if applicable, its tier parents do not need to provide these documents unless (i) the U.S. company's articles of incorporation and by-laws, or similar documents filed for the U.S. company's existence and management, have been amended; or (ii) the Designated Responsible Security Office has requested the documents.
Contractors with approved facility clearances should identify their Facility Code or CAGE Code if DOD, the date they submitted their Certificate Pertaining to Foreign Interests, and the FOCI determination date to the Contracting Officer.
2. Complete and return the attached Summary FOCI Data Sheet. The Summary FOCI Data Sheet will enable the Designated Responsible Security Office to review and verify the submitted information in a quicker and more thorough manner which will provide a quicker determination. NOTE: A contractor with a DOE approved facility clearance and, if applicable, its tier parents do not need to provide the Summary FOCI Data Sheet unless (i) a change(s) has occurred which would affect the answers to the information in the Summary FOCI Data Sheet previously provided by the contractor and/or its tier parents,

if applicable; or (ii) the Designated Responsible Security Office has requested the contractor and/or its tier parents to complete and return the Summary FOCI Data Sheet.

3. Consolidated information and statements for the organization's most recently closed accounting year.
 - a. Publicly-traded companies (including the ultimate parent, intermediate parent, and subsidiary) shall submit its annual report and Securities and Exchange Commission Form 10-K report for the most recently closed accounting year, as well as its most recent proxy statement for the annual meeting of stockholders.

If the company's stock is not publicly traded but the company has publicly-traded debt, the company shall submit its Securities and Exchange Commission Form 10-K report for the most recently closed accounting year.
 - b. Privately-owned companies (including the ultimate parent, intermediate parent, and subsidiary) shall submit consolidated financial information (i.e., to include the accounts of the company and its subsidiary companies) for the most recently closed accounting year. The financial information shall be prepared and presented in accordance with generally accepted accounting principles as established by the financial accounting standards board, to include accompanying footnote disclosures. If available, audited financial information shall be provided. If audited financial information is not available, unaudited information shall be provided, but only if accompanied by a certification attesting to the unavailability of audited information.
4. Listing of owners, officers, directors, and executive personnel (OODEP)
 - a. The contractor and all tier parents shall submit a list identifying their respective organizations owners, officers, directors, and executive personnel, to include their complete names; social security numbers; date and place of birth; citizenship; titles of all positions they hold within the organization; and what clearances, if any, they possess or are in the process of obtaining and identification of the Government agency (ies) that granted or will be granting those clearances. If any position is vacant, so state.
 - b. For sole proprietorships operating in community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin), information on the sole proprietor's spouse, if applicable, shall also be provided on the OODEP listing.

NOTE: *If any of these documents are missing, the Contracting Officer cannot complete award of the contract.*

STANDARD FORM 328 CERTIFICATE PERTAINING TO FOREIGN INTERESTS (REV 6/2008)

CERTIFICATE PERTAINING TO FOREIGN INTERESTS <i>(Type or print all answers)</i>		<i>Form Approved</i> <i>OMB No. 0704-0194</i> <i>Expires May 31, 2011</i>	
The public reporting burden for this collection of information is estimated to average 70 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Department of Defense, Executive Services and Communications Directorate (0704-0194). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.			
PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO YOUR RESPECTIVE COGNIZANT SECURITY OFFICE.			
PENALTY NOTICE			
Failure to answer all questions or any misrepresentation (by omission or concealment, or by misleading, false or partial answers) may serve as a basis for denial of clearance for access to classified information. In addition, Title 18 United States Code 1001, makes it a criminal offense, punishable by a maximum of five (5) years imprisonment, \$15,000 fine or both, knowingly to make a false statement or repre-		sentation to any Department or Agency of the United States as to any matter within the jurisdiction of any Department or Agency of the United States. This includes any statement made herein which is knowingly incorrect, incomplete or misleading in any important particular.	
PROVISIONS			
1. This report is authorized by the Secretary of Defense, as Executive Agent for the National Industrial Security Program, pursuant to Executive Order 12829. While you are not required to respond, your eligibility for a facility clearance cannot be determined if you do not complete this form. The retention of a facility security clearance is contingent upon your compliance with the requirements of DoD 5220.22-M for submission of a revised form as appropriate.		2. When this report is submitted in confidence and is so marked, applicable exemptions to the Freedom of Information Act will be invoked to withhold it from public disclosure.	
		3. Complete all questions on this form. Mark "Yes" or "No" for each question. If your answer is "Yes" furnish in full the complete information under "Remarks."	
QUESTIONS AND ANSWERS			
1. <i>(Answer 1a. or 1b.)</i>		YES	NO
a. <i>(For entities which issue stock):</i> Do any foreign person(s), directly or indirectly, own or have beneficial ownership of 5 percent or more of the outstanding shares of any class of your organization's equity securities?			
b. <i>(For entities which do not issue stock):</i> Has any foreign person directly or indirectly subscribed 5 percent or more of your organization's total capital commitment?			
2. Does your organization directly, or indirectly through your subsidiaries and/or affiliates, own 10 percent or more of any foreign interest?			
3. Do any non-U.S. citizens serve as members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials?			
4. Does any foreign person(s) have the power, direct or indirect, to control the election, appointment, or tenure of members of your organization's board of directors (or similar governing body) or other management positions of your organization, or have the power to control or cause the direction of other decisions or activities of your organization?			
5. Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)?			
6. Does your organization, whether as borrower, surety, guarantor or otherwise have any indebtedness, liabilities or obligations to a foreign person(s)?			
7. During your last fiscal year, did your organization derive:			
a. 5 percent or more of its total revenues or net income from any single foreign person?			
b. In the aggregate 30 percent or more of its revenues or net income from foreign persons?			
8. Is 10 percent or more of any class of your organization's voting securities held in "nominee" shares, in "street names" or in some other method which does not identify the beneficial owner?			
9. Do any of the members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials hold any positions with, or serve as consultants for, any foreign person(s)?			
10. Is there any other factor(s) that indicates or demonstrates a capability on the part of foreign persons to control or influence the operations or management of your organization?			

STANDARD FORM 328 (Revised 6/2008)

PREVIOUS EDITION IS OBSOLETE

REMARKS (*Attach additional sheets, if necessary, for a full detailed statement.*)**CERTIFICATION**

- I CERTIFY that the entries made by me above are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

WITNESSES:_____
(Date Certified)

By _____
(Signature of Authorized Contractor
Representative)

(Typed Name of Contractor)

NOTE: In case of a corporation, a witness is not required but the _____
certificate below must be completed. Type or print names under (Title of Authorized Contractor Representative)
all signatures.

(Address)

NOTE: Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not
execute both the Agreement and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____
of the corporation named as Contractor herein; that _____
who signed this certificate on behalf of the Contractor, was then _____
of said corporation; that said certificate was duly signed for and in behalf of said corporation by authority of its governing body, and is
within the scope of its corporate powers.

(Corporate Seal)

(Signature and Date)

INSTRUCTIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS

Note: Please submit the completed certificate with signatures. DOE has an electronic system for offerors/bidders to submit FOCI information, which can be accessed at <https://foci.anl.gov>. All completed forms must be scanned into the eFOCI system. Thus, a signed SF-328, executed in accordance with the form's instructions, must still be submitted with the offeror's offer/proposal to DOE.

Question 1

- (a) *(For entities which issue stock):* Do any foreign person(s), directly or indirectly, own or have beneficial ownership of 5% or more of the outstanding shares of any class of your organization's equity securities? If yes:
- (1) Identify the percentage of any class of stock or other securities issued, which are owned by foreign persons, broken down by country. Include indirect ownership through one or more intermediate level(s) of subsidiaries. Indicate voting rights of each class of stock.
 - (2) Are there shareholder agreements? If yes, attach a copy (ies), and if none, so state.
 - (3) Indicate whether a copy of SEC Schedule 13D/13G report has been received from any investor. If yes, attach a copy(ies).

NOTE: Ownership of less than 5% should be included if the holder is entitled to control the appointment and tenure of any management position.

- (b) *(For entities that do not issue stock):* Has any foreign person directly or indirectly subscribed 5% or more of your organization's total capital commitment? If yes:
- (1) Identify the percentage of total capital commitment, which is subscribed by foreign persons.
 - (2) Is there an agreement(s) with the subscriber(s)? If yes, attach a copy(ies), and if none, so state.

Question 2

- (a) Does your organization directly, or indirectly through your subsidiaries and/or affiliates, own 10% or more of any foreign interest? If yes:
- (1) Identify the foreign interest by name, country, percentage owned, and personnel who occupy management positions with the organizations.
 - (2) If there are personnel from your organization who occupy management positions with the foreign firm(s), identify the name(s), title, and extent of involvement in the operations of the organizations (to include access to classified information).

Question 3

- (a) Do any non-U.S. citizens serve as members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials? If yes:
- (1) Identify the foreign person(s) by name, title, citizenship, immigration status and clearance or exclusion status.
 - (2) Attach copies of applicable by-laws or articles of incorporation, which describe the affected position(s). However, if you have already provided such copies to the Cognizant Security Agency Industrial Security Representative, so state.

Question 4

- (a) Does any foreign person(s) have the power, direct or indirect, to control the election, appointment, or tenure of members of your organization's board of directors (or similar governing body) or other management positions of your organization, or have the power to control or cause the direction of other decisions or activities of your organization? If yes:
- (1) Identify the foreign person(s) by name, title, citizenship, and all details concerning the control or influence.

Note: If any foreign person(s) have such power, this question shall be answered in the affirmative even if such power has not been exercised, and whether or not it is exercisable through ownership of your facility's securities, if such power may be invoked by contractual arrangements or by other means.

Question 5

- (a) Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)? If yes:
- (1) For each instance, provide the name of the foreign person, country, percentage of gross income derived, and nature of involvement, including:
 - (i) Whether defense/nuclear related or not
 - (ii) Involvement with classified or export controlled technology
 - (iii) Compliance with export control requirements
 - (2) Where the organization has a large number of involvements and where these involvements are not defense/nuclear related and represent a small percentage of gross income, the explanation can be a generalized statement addressing the totals by country.

NOTE: We do not expect and will not require the contractor to ask every customer if he/she falls within the NISPOM definition of a foreign person. We will ask the

contractor to provide ongoing security education to those individuals who negotiate and/or administer such agreements regarding their responsibilities to report agreements with a foreign person(s) to the best of their knowledge. The contractor will be certifying the response to this question to "the best of his/her knowledge" or "through his/her best efforts".

Question 6

- (a) Does your organization, whether as borrower, surety, guarantor or otherwise have any indebtedness, liabilities or obligations to a foreign person(s)? If yes:
- (1) Provide your overall debt-to-equity ratio (in percentage).
 - (2) With respect to indebtedness or liability to a foreign person, indicate to whom indebted or liable, what collateral has been furnished or pledged, and any conditions or covenants of the loan agreement. If stock or assets have been furnished or pledged as collateral, provide a copy of the loan agreement or pertinent extracts thereof (to include procedures to be followed in the event of default).
 - (3) If any debentures are convertible, provide specifics.
 - (4) If loan payments are in default, provide details.
 - (5) This question should be answered in the affirmative if the debt is with a U.S. entity that is owned or controlled either directly or indirectly by a foreign person. If unknown, so state.

NOTE: As stated above, we do not expect and will not require the contractor to ask every lender if he/she qualifies as a foreign person. We will ask the contractor to provide ongoing security education to those employees who handle lending arrangements regarding their responsibilities to report any such arrangements with a foreign person lender, to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or through his/her best efforts".

Question 7 - During your last fiscal year, did your organization derive:

- (a) 5% or more of its total revenues or net income from any single foreign person?
- (b) In the aggregate 30% or more of its revenues or net income from foreign persons?

If yes to either part of the question:

- (1) Provide overall percentage of income derived from foreign sources by country, nature of involvement, and type of services or products.

- (2) Indicate if any single foreign source represents in excess of 5% or total revenues or net income.
- (3) Indicate whether any classified information is involved.
- (4) State whether facility is in compliance with applicable export control requirements.

NOTE: As previously stated, we do not expect and will not require the contractor to ask every customer if he/she qualifies as a foreign person. We will ask the contractor to provide ongoing security education to those employees who handle information about company revenues regarding their responsibility to report revenues derived from a foreign person(s) to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or "through his/her best efforts".

Question 8

- (a) Is 10% or more of any class of your organization's voting securities held in "nominee" shares, in "street names" or in some other method, which does not disclose the beneficial owner? If yes:
 - (1) Identify each foreign institutional investor holding 10% or more of the voting stock by name and address and the percentage of stock held.
 - (2) Indicate whether any investor has attempted to, or has exerted any control or influence over appointments to management positions or influenced the policies of the organization.
 - (3) Include copies of SEC Schedule 13D/13G.

Question 9

- (a) Do any of the members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials hold any positions with, or serve as consultants for, any foreign person(s)? If yes:
 - (1) Provide the name, title, citizenship, immigration status and clearance or exclusion status on all such persons.
 - (2) Identify, by name and address, each foreign organization with which such persons serve and indicate the capacity in which they are serving.
 - (3) Include a Statement of Full Disclosure of Foreign Affiliations for every cleared individual who is a representative of a foreign interest.

- (4) For each individual who is cleared or will require clearance and who is representative of a foreign interest, include a statement of Full Disclosure of Foreign Affiliations.

NOTE: We expect the contractor to be able to answer this question fully for those individuals holding such positions with his/her foreign subsidiaries and any foreign interests. However, we do not expect and will not require the contractor to ask every individual to ascertain if he/she is serving as a director, officer or manager of a foreign person. We will ask the contractor to provide ongoing security education to all key management personnel of their responsibilities to report serving as an interlocking director or in any other type of positions with a foreign person to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or "through his/her best efforts".

Question 10

- (a) Is there any other factor(s) that indicates or demonstrates a capability on the part of foreign persons to control or influence the operations or management of your organization? If yes:
 - (1) Describe the foreign involvement in detail, including why the involvement would not be reportable in the preceding questions.

DEFINITIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS

Affiliate: Any entity effectively owned or controlled by another entity.

Beneficial Owner: The true owner of a security who may, for convenience, be recorded under the name of a nominee. Such ownership entitles the owner to the power to vote or direct the voting of a security or to impose or direct the disposition of a security.

Bond: A certificate which is evidence of a debt in which the issuer promises to repay a specific amount of money to the bondholder, plus a certain amount of interest, within a fixed period of time.

Convertible Debentures: Bonds which the holder can exchange for shares of voting stock.

Covenant: A detailed clause in a lending agreement designed to protect the lender.

Debenture: A general debt unsecured by a pledge of any specific piece of property. Like any other general creditor claims, a debenture is secured by any property not otherwise pledged.

Debt-to-Equity Ratio: Total liabilities divided by total shareholders' equity (total assets minus total liabilities of a corporation; also called stockholders' equity, equity, and net worth). This shows to what extent owners' equity can cushion creditors' claims in the event of liquidation.

Equity Security: An ownership interest in a company, most often taking the form of corporate stock.

Foreign Interest: Any foreign government, agency of a foreign government, or representative of a foreign government; any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the U.S. or its possessions and trust territories, and any person who is not a citizen or national of the United States.

Foreign Person: Any foreign interest and any U.S. person effectively owned or controlled by a foreign interest.

Guarantor: One who makes the guaranty (an agreement or promise to answer for the debt, default or miscarriage of another).

Immigration Status: Legal basis for a non-U.S. citizen's residence in the United States (e.g., work visa, admission for permanent residence). Note: Immigration and Naturalization Service Form I-9 is an excellent source for this information.

Joint Venture: A partnership or cooperative agreement between two or more persons or firms, usually restricted to a single specific undertaking. Normally the undertaking is of short duration, such as for the design and construction of a dam.

Liability: Claim on the assets of a company or individual.

Licensing Agreement: A permit granted by one business to another which permits duplication of processes and production of similar items.

Management Positions: For the purposes of the questions on this form, management positions shall include owners, officers, directors, partners, regents, trustees, senior management officials, other executive personnel and the facility security.

Nominee Share: A share of stock or registered bond certificate which has been registered in a name other than the actual owner.

Proxy: One who acts for another. Also, the document by which such a representative is authorized to act.

Representative of a Foreign Interest (RFI): A citizen or national of the U.S., who is acting as a representative of a foreign interest (see Foreign Interest).

S.E.C. Schedule 13D: This schedule discloses beneficial ownership of certain registered equity securities. Any person or group of persons who acquire a beneficial ownership of more than 5 percent of a class of registered equity securities of certain issuers must file a Schedule 13D reporting such acquisition with certain other information.

S.E.C. Schedule 13G: This schedule is a much abbreviated version of Schedule 13D that is only available for use by a limited category of "persons" (such as banks, broker/dealers, and insurance companies) and even then only when the securities were acquired in the ordinary course of business- and not with the purpose or effect of changing or influencing the control of the issuer.

Sales Agreement: An agreement between two parties for the sale of goods or services on a continuing basis.

Stock Option: An option is the right to buy or sell at some point in the future.

Street Name: The common practice of registering publicly traded securities in the name of one or more brokerage firms.

Subordinated Debenture: A bond having a claim on assets only after the senior debt has been paid off in the event of liquidation.

Surety: One who is immediately liable for the debt of another if that other person or entity fails to pay.

Total Capital Commitment: The sum of money and other property an enterprise uses in transacting its business.

U.S. Person: Any form of business enterprise or entity organized, chartered or incorporated under the laws of the United States or its possessions and trust territories and any person who is a citizen or national of the United States.

REPRESENTATIVE OF FOREIGN INTEREST STATEMENT/CERTIFICATE

Statement of Full Disclosure of Foreign Connections

Representative of a Foreign Interest (RFI): A citizen or national of the U.S., or an intending citizen to the U.S., who possess or is being processed for an access authorization and who is active as a representative of a foreign interest.

Foreign Interest: Any foreign government, agency or a foreign government, or representative of a foreign government; any form of business enterprise or legal entity organization, chartered or incorporated under the laws of any country, other than the U.S. or its possessions and trust territories, and any person who is not a citizen or a national of the U.S.

Name of the foreign interest:

Address of the foreign interest:

Nature of business of foreign interest and the products/services involved. If the products/services are strictly commercial in nature or if there can be military application:

Full details of ownership or affiliation with the foreign interest:

The specific relationship between the foreign interest and the United States organization:

Your job titles and specific duties with the foreign interest:

Percentage of time devoted to foreign interest:

Percentage of U.S. organization's revenues and net income derived from foreign firm during the U.S. organization's most recently closed accounting year:

Name and address of all U.S. facilities where you hold or are in process for an access authorization:

The nature of business of all U.S. organizations and the products/services involved:

Summary of duties with the United States organization. Provide detailed information, as well as position title(s):

Have you ever registered as an Agent of a foreign government as detailed in 18 U.S.C. 219? If so, please provide details:

CERTIFICATION:

I recognize my special responsibility to protect classified information and/or special nuclear material from disclosure to any unauthorized person, foreign, or domestic.

TYPE OR PRINT FULL NAME: _____

SIGNATURE: _____ DATE: _____

SOCIAL SECURITY NUMBER: _____

LEGAL NAME OF CONTRACTOR FACILITY: _____

SUMMARY FOCI DATA SHEET

PROVIDE RESPONSES TO THE QUESTIONS IDENTIFIED BELOW: (SUPPLEMENTAL PAGES MAY BE ATTACHED TO PROVIDE COMPLETE AND ACCURATE RESPONSES.)

(1) Type of business structure: () corporation; () college/university; () limited liability company; () sole proprietorship; () limited partnership; () general partnership; () other

(2) Exact name as specified in charter:

(3) All other names used (i.e., dba [doing business as], aka [also known as]):

(4) State or other jurisdiction of incorporation or organization:

(5) Date of incorporation or organization:

(6) Stock ownership: () privately held, () publicly traded.

(a) Class(es) of stock:

(b) Number of shares authorized of each class of stock:

(c) Number of shares issued of each class of stock?

(d) Explain difference(s) between each class of stock, to include voting rights:

(e) Is cumulative voting authorized? () YES () NO

- (7) Current physical address for the principal executive offices, individual point of contact and phone number for FOCI matters and the organization's facility security officer and phone number.

Physical Address _____
Facility Security Officer _____
Telephone _____

- (8) List all company names and/or address changes, and the date(s) of such change(s), for the principal executive offices during the past 10 years.

- (9) Legal name(s) of all tier parent organizations, if applicable.

- (10) Provide the current number of members of the company's Board of Directors, to include identification by name of the Chairman of the Board, if applicable.

- (11) Will any parent organizations be performing work requiring access authorizations, and if so, identify by legal name the parent organization(s) name.

- (12) Does your organization or any parent organization maintain DOD facility clearances? If yes, please provide the DOD cage code(s).

OFFICIAL USE ONLY (WHEN COMPLETED)

**OWNERS, OFFICERS, DIRECTORS, AND EXECUTIVE PERSONNEL (OODEP)
LIST OF KEY MANAGEMENT PERSONNEL**

LEGAL COMPANY NAME AND PHYSICAL ADDRESS OF FACILITY LOCATION:

ADDRESS OF COMPANY’S PRINCIPAL EXECUTIVE OFFICES IF DIFFERENT FROM THE PHYSICAL ADDRESS OF THE FACILITY LOCATION:

INDIVIDUAL'S COMPLETE NAME	ALL COMPANY TITLES/POSITIONS HELD BY IDENTIFIED INDIVIDUAL	DATE/PLACE OF BIRTH/CITIZENSHIP (U.S., OTHER, DUAL)	SOCIAL SECURITY NUMBER	IDENTIFY INDIVIDUAL'S SECURITY CLEARANCE(S) LEVEL, ISSUING U.S. GOVERNMENT AGENCY(ies) OR EXCLUSION AND DATE

LIST CERTIFIED CORRECT BY:

Type or Print Name and Signature of Authorized Official

Title

Date Certified

NOTE: SEE NEXT PAGE FOR INSTRUCTIONS REGARDING COMPLETING THIS FORM.

INSTRUCTIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS

INSTRUCTIONS:

Provide requested OODEP information in accordance with the following instructions. In addition, the OODEP listing must be certified as being accurate, current, and complete by an authorized official of the organization [i.e., a person authorized to represent and sign for the organization as officially recorded by the organization (that is, in the document which sets forth the terms and conditions for its operation and management--the bylaws, operating agreement, partnership agreement, etc.)] or any other employee, identified by name, of the organization, if designated in writing by such an authorized official as having been delegated authority to execute the Standard Form 328. On behalf of the organization:

Owners. The requested information on owners and representatives or agents of stockholders is to be attached to the organization's OODEP listing:

(a) For privately-owned organizations:

- (1) Provide the following information for each person who directly or indirectly owns or has beneficial ownership of 5 percent or more of any class of the organization's securities or who has directly or indirectly subscribed 5 percent or more of the organization's total capital commitment:
 - (i) If the beneficial owner holds a position as an OODEP in the organization and is identified on the OODEP listing, provide the individual's name with the class and number of shares of capital stock he/she owns of the organization's securities or the capital commitment he/she has subscribed.
 - (ii) If the beneficial owner does not hold a position as an OODEP in the organization and is not identified on the OODEP listing, provide the individual's name, address, and the class and number of shares of capital stock he/she owns of the organization's securities or the capital commitment he/she has subscribed. If known, information on the individual's citizenship should also be provided.
- (2) Provide the following information for each legal entity which directly or indirectly owns or has beneficial ownership of 5 percent or more of any class of the organization's securities or which has directly or indirectly subscribed 5 percent or more of the organization's total capital commitment:

The legal name (i.e., as specified in charter) with the address of its principal executive offices and the class and number of shares of capital stock the entity owns of the organization's securities or the capital commitment the entity has subscribed. In addition, if the entity is controlled by another organization, the country of ultimate legal residence must be provided.

- (3) Provide the name of any representative(s) or agent(s) of any owner (person or entity), if any, who hold positions, such as Board member (or similar type of governing body), officers, executive personnel, or general partners in your organization. Also identify the owner which the individual is representing.
- (b) For publicly-traded organizations:
- (1) Provide the most recent copies of any Schedules 13D and/or 13G received from any beneficial owners (foreign or domestic) who hold 5 percent or more of the organization's securities.
 - (2) Provide the name of any representative(s) or agent(s) of any stockholder (person or entity), if any, who hold positions, such as Board member (or similar type of governing body), officers, executive personnel, or general partners in your organization. Also identify the stockholder which the individual is representing.

Officers: Identify and provide requested information (i.e., names, titles, etc.) for all of the organization's officers on the OODEP listing.

The definition of officers is: Those persons in positions established as officers as officially recorded by the organization (that is, in the document filed for the organization's existence and the document which sets forth the terms and conditions for its operation and management--the articles of incorporation and bylaws; articles of organization and operating agreement; certificate of limited or general partnership and the partnership agreement; etc.). However, excluded from this definition are: (a) assistant vice presidents who have no management responsibilities related to performance on classified contracts; (ii) assistant secretaries; and (iii) assistant treasurers.

Directors: Identify and provide requested information (i.e., names, titles, etc.) for all of the organization's directors on the OODEP listing, to include identification of the Chairman of the Board and any Vice Chairman. If the organization has no Chairman of the Board of Directors, identify the individual who performs those functions at board meetings.

The definition of directors is: Members of the board or similar governing body chosen to direct the affairs of a corporation or institution.

Executive Personnel: Identify and provide requested information (i.e., names, titles, etc.) for all of the organization's executive personnel on the OODEP listing.

The definition of executive personnel is: Those individuals who perform policy making functions for the organization, or any other person in charge of a principal business unit, division, or function.

Facility Security Officer: Identify and provide requested information (i.e., name, title, etc.) for the organization's Facility Security Officer.

The definition of a Facility Security Officer is: The individual at the facility assigned the responsibility of administering the requirements of the Safeguards and Security Program within the facility.

Spouse of a sole proprietor: For those sole proprietorships operating in community property states, identify and provide requested information (i.e., all information required on the OODEP listing) on a sole proprietor's spouse, if any. If there is no spouse, so state.

Vacant positions: If any OODEP position is vacant, so state and include estimated date vacancy will be filled.

**SECTION L – INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS OR
RESPONDENTS**

L-1 SYSTEMS FOR AWARD MANAGEMENT (JUL 2013)

- (a) Definitions. As used in this provision—

“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 which is 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 System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

“Registered in the System for Award Management (SAM) database” means that—

- (1) The Offeror has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see Subpart 4.14), into the SAM database; and
- (2) The offeror has completed the Core, Assertions, and Representations and Certification, and Points of contact sections of the registration in the SAM database;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process.
- (4) The Government has marked the record “Active”.

- (b)

- (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM 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 SAM 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) Via the internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Trade style, 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 SAM 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) Offerors may obtain information on registration at <https://www.acquisition.gov>.

L-2 FAR 52.215-1 INSTRUCTIONS TO OFFERORS – COMPETITIVE ACQUISITION (JAN 2004)

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

“Discussions” are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer’s discretion, result in the Offeror being allowed to revise its proposal.”

“In writing,” “writing,” or “written” means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Proposal modification” is a change made to a proposal before the solicitation’s closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

“Time,” if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.*

(1) Unless other methods (*e.g.*, electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages and must:

(i) Be addressed to the office specified in the solicitation, and

(ii) Show the time and date specified for receipt, the solicitation number, and the name and address of the Offeror. Offerors using commercial carriers

should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c) (1) (i) and (c) (1) (ii) of this provision.

- (2) The first page of the proposal must show:
 - (i) The solicitation number;
 - (ii) The name, address, and telephone and facsimile numbers of the Offeror (and electronic address if available);
 - (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;
 - (iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the Offeror's behalf with the Government in connection with this solicitation; and
 - (v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.
- (3) *Submission, modification, revision, and withdrawal of proposals.*
 - (i) Offerors are responsible for submitting proposals, and any modification, or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.
 - (ii)
 - (A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and --
 - (1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

- (2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
 - (3) It is the only proposal received.
 - (B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.
 - (iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
 - (iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
 - (v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an Offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.
- (4) Unless otherwise specified in the solicitation, the Offeror may propose to provide any item or combination of items.
 - (5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, *Evaluation of Foreign Currency Offers*, is included in the solicitation.
 - (6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

- (7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.
- (8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.
- (d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified as referenced at Section L, L-18 *OFFER ACCEPTANCE PERIOD*.
- (e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall --
 - (1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this Offeror as a result of -- or in connection with -- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and
 - (2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.
- (f) *Contract award.*
 - (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible Offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and sub factors in the solicitation.
 - (2) The Government may reject any or all proposals if such action is in the Government's interest.
 - (3) The Government may waive informalities and minor irregularities in proposals received.
 - (4) The Government intends to evaluate proposals and award a contract without discussions with Offerors (except clarifications as described in FAR 15.306(a)).

Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

- (5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the Offeror specifies otherwise in the proposal.
- (6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.
- (7) Exchanges with Offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.
- (8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.
- (9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.
- (10) A written award or acceptance of proposal mailed or otherwise furnished to the successful Offeror within the time specified in the proposal shall result in a binding contract without further action by either party.
- (11) If a post-award debriefing is given to requesting Offerors, the Government shall disclose the following information, if applicable:
 - (i) The agency's evaluation of the significant weak or deficient factors in the debriefed Offeror's offer.
 - (ii) The overall evaluated cost or price and technical rating of the successful and the debriefed Offeror and past performance information on the debriefed Offeror.
 - (iii) The overall ranking of all Offerors, when any ranking was developed by the agency during source selection.

- (iv) A summary of the rationale for award.
- (v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful Offeror.
- (vi) Reasonable responses to relevant questions posed by the debriefed Offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

L-3 FAR 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a performance-based management and operating contract with hybrid pricing as follows: Contract Line Item Number CLIN 0001 – cost plus fixed fee and award fee and CLIN 0002 cost plus fixed fee. CLIN 0003 to be determined on a case-by-case basis.

L-4 FAR 52.222-24 PRE-AWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a pre-award compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

L-5 FAR 52.233-2 SERVICE OF PROTEST (SEP 2006) (AS MODIFIED BY DEAR 952.233-2)

- (a) Protests, as defined in subsection 33.101 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:

Sandra Caesar
Contracting Officer
U. S. Department of Energy, National Nuclear Security Administration
M&O Contracting Branch (NA-APM-131)
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Phone: (202) 586-2346
Facsimile: (202) 586-7535
E-mail: sandra.caesar@nnsa.doe.gov

- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.
- (c) Another copy of a protest filed with the Government Accountability Office shall be furnished NNSA GC to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

L-6 FAR 52.252-2 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

- (a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the provision.
- (b) The use in this solicitation of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

L-7 DEAR 952.211-70 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (APR 2008)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a [X] DO-E2 Rating; [] DX-Rating; and certified for national defense use in accordance with the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700).

L-8 DEAR 952.219-70 DOE MENTOR-PROTÉGÉ PROGRAM (MAY 2000)

The Department of Energy (DOE) has established a Mentor-Protégé Program to encourage its prime contractors to assist 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. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy’s Office of Small and Disadvantaged Business Utilization.

L-9 DEAR 952.227-84 RIGHT TO REQUEST PATENT WAIVER (FEB 1998)

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date

of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at DEAR 952.227-11 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR Part 784.

L-10 DEAR 952.233-4 NOTICE OF PROTEST FILE REVIEW AVAILABILITY (AUG 2009)

- (a) If a protest of this procurement is filed with the Government Accountability Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective Offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103- 355. Such request must be in writing and addressed to the Contracting Officer for this procurement.
- (b) Any Offeror who submits information or documents to the DOE/NNSA for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective Offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, Offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR Part 1004).

L-11 DEAR 952.233-5 AGENCY PROTEST REVIEW (SEP 1996)

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 48 CFR 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the Contracting Officer prior to filing a protest.

L-12 REQUIREMENT FOR GUARANTEE OF PERFORMANCE

As stated in FAR 35.107, FFRDC's are operated, managed, and/or administered by either a university or consortium of universities, other not-for-profit or nonprofit organization, or an industrial firm, as an autonomous organization or as an identifiable separate operating unit of a parent organization. The successful Offeror will be required, as part of the determination of responsibility and as a condition of the award of the contract to that entity, to furnish a guarantee

of that entity's performance (see Section L, L-14(d)). That guarantee of performance must be satisfactory in all respects to the Department of Energy.

L-13 PROPOSAL PREPARATION INSTRUCTIONS - GENERAL

- (a) Offerors are expected to be sufficiently knowledgeable of the mission of the Sandia National Laboratories (SNL) to adequately prepare their offers and other proposal information submitted under this solicitation. Information relating to operations, strategic plans and technical projects is available in various documents, many of which can be accessed on the Internet at <http://nnsa.energy.gov/aboutus/ouroperations/apm/majcontrsolicitation/snlcomp>
- (b) "Offeror" refers to the legal entity submitting the offer. If the Offeror is organized as a separate legal entity (a legal entity separate from its parent organization(s)) the separate legal entity will be totally responsible for all Contract activities (see Section G, G-4, *Performance Guarantee(s)*). Additionally, the separate legal entity must be incorporated or otherwise legally established on or before the date of proposal submission.
- (c) "Team member" refers to any other entity identified in the Offeror's proposal as being responsible for performance of any of the work required by the contemplated Contract and is a member of a "contractor team arrangement" (as defined in FAR 9.601, *Contractor Team Arrangement*). The Offeror shall not submit the information required at Section L, L-14(c), L-14(d), and L-15 (a), Criterion 1, *Past Performance*, for small business team members with a proposed work scope less than \$10 million over the Base Term.
- (d) No classified information shall be included in this solicitation or in the Offeror's proposal.
- (e) *Solicitation Questions/Comments.* Questions or comments regarding this solicitation shall be submitted via email to: SEB6@nnsa.doe.gov. Submission of solicitation questions/comments by other means is not authorized. Questions and responses, if appropriate will be posted to FedConnect at (<https://www.fedconnect.net/Fedconnect/>) website. FedConnect will be the primary and official site for posting information about this requirement and amendments to the solicitation. The website at <http://nnsa.energy.gov/aboutus/ouroperations/apm/majcontrsolicitation/snlcomp> will be a secondary location, as it may take a few days to post information to this site. In the event that information posted on FedConnect differs from that posted on the secondary website the information on FedConnect shall be controlling. All questions on the solicitation should be submitted as soon as possible, but no later than June 15, 2016. Questions submitted after this date may not be answered and may not be a basis for amending this solicitation.
- (f) Submission of proposals shall be electronically via FedConnect (<https://www.fedconnect.net/Fedconnect/>). The FedConnect submission will be used as the official proposal submission for this requirement and will be used for the

Government's evaluation; offerors shall also submit hard copies as specified below and in Section L, L-17(a). Proposals shall be structured in three separate volumes as follows:

- (1) Volume I – The Offer - One (1) signed original and one (1) copy
- (2) Volume II – Technical and Management Information – One (1) original and two (2) copies
- (3) Volume III – Cost Information – One (1) original and two (2) copies
- (4) (i) Each volume submitted shall comply with the following specifications:

The Offeror shall also provide a copy of Volumes I, II, and III of the proposal on a flash drive in addition to the hard copies (paper) above, and electronically through FedConnect. Multiple files may be submitted for each Volume; however, each file must clearly identify the Volume number and the sequence to which it relates. Reference(s) to another part or section within the *same* Volume of the proposal may be appropriate in order to avoid duplication of detailed information.

Include the Offeror's point of contact (name and telephone number) that can assist the Contracting Officer with technical questions/problems, if any, associated with the electronic files.

Proposals must be clearly and concisely written, indexed (cross-indexed as appropriate), and logically assembled. In addition to the guidance provided in paragraph (h), all pages of each Volume shall be appropriately numbered, identified with the name of the Offeror, the date, the solicitation number, and a legend in accordance with the solicitation's Section L (L-2) provision FAR 52.215-1, *Instructions to Offerors—Competitive Acquisition*, paragraph (e), *Restriction on Disclosure and Use of Data*, as appropriate, on each page. This is the only information that can be displayed within the one-inch top, bottom, and side margins.

Subcontractor and/or team member submissions of proprietary information may provide a password protected document (file) to the prime Offeror. In such instances the subcontractor and/or team member shall share the password with the Contracting Officer. The subcontractor and/or team member proposal must adhere to the proposal due date/time and other solicitation requirements. Any passwords required to open password protected documents are subject to the proposal due date/time.

Each volume shall contain a glossary of all abbreviations and acronyms used, including a definition for each.

- (ii) Offers submitted by facsimile methods will not be accepted.

(g) Maximum Page Limitations

The Transmittal Letter shall be limited to one (1) page and is not considered as part of Volumes I, II, or III. There is no page limitation for the Offer (Volume I) or the Cost Information (Volume III). The Technical and Management Information (Volume II) shall not exceed 35 pages; however, certain pages are excluded from the page count as noted below. An Executive Summary or Overview of Volume II may be provided in Volume II and shall be included in the 35 page limitation. The following are excluded from the overall page count limitation:

- (1) Listing of Key Personnel (Section L, Attachment B), resume information (three page limitation except for the Laboratory Director, which is five pages), and letters of commitment. *Note a cover page to resumes is not required.
- (2) The Cross Reference Matrix (Section L, Attachment D);
- (3) The Volume II associated Table of Contents, list of Figures/Glossary of Acronyms used, including a definition for each, dividers, tabs or similar inserts that do not provide any substantive information; and
- (4) Past Performance Information Forms and attached additional pages (Section L, Attachment E – is limited to eight (8) pages per PPIF, including any additional pages); copies of any award fee determinations, performance evaluation reports or other documentation that reflects the formal performance assessments of the Offeror by its customer; and information concerning terminated contracts.

(h) Page Formatting and Restrictions

The following page formatting and restrictions shall apply:

- (1) Page size shall be 8.5 x 11 inches, not including foldouts. Page margins shall be a minimum of one inch at the top, bottom, and each side. Pages shall be numerically numbered sequentially by Volume (e.g., Volume I – 1, Volume I –2, Volume I – 3). For the Volume II Table of Contents and list of Figures/Glossary of Acronyms, the page(s) shall use the following number style: Volume II - i, Volume II - ii, Volume II - iii, etc. Volumes I, II, and III text shall be submitted in searchable portable document format (PDF) format using a minimum 12 font size and Times New Roman font style. Print type used in graphs, figures, charts, and tables may be smaller than size 12, but no smaller than size 8. To facilitate the Government's search for key words during proposal evaluation, Offerors should ensure that tables, diagrams, charts and/or other graphic illustrations are word searchable using the Adobe Acrobat "Find" function. Inserts that are predominantly artistic illustrations or pictures and do not contain a significant amount of narrative, are excluded from this requirement. When both sides of a sheet display printed material, they will be counted as two (2) pages.

- (2) Foldouts of charts, tables, diagrams, or drawings shall not exceed 11 x 17 inches, if used. Foldout pages shall fold entirely within the volume and each side (front or back) of a foldout is considered two (2) pages for purposes of determining the number of pages. When both sides (front and back) of a foldout display contain printed material, they will be counted as four (4) pages. Page margins for the foldouts shall be a minimum of one inch at the top, bottom, and each side. Foldouts may only be used for large tables, charts, graphs, diagrams, and other schematics, and not for pages of text.
- (3) Page counting will begin with the first page and continue up to the page limitation. Pages exceeding the page count will not be read or evaluated. This process will be applied to the overall page limit for Volume II as well as page limits for specific documents, i.e., resumes and PPIFs, therefore a cover page to resume is not required as it will count against the page limitation. Material may not be incorporated by reference (including any information in Volume I or III) as a means to circumvent the page limitations identified in Section L, L-13(g) or for any other reason, except for reference(s) to another part or section within the *same* Volume of the proposal in order to avoid duplication of detailed information.

L-14 PROPOSAL PREPARATION INSTRUCTIONS – VOLUME I, THE OFFER

Volume I, The Offer, consists of the offer to enter into a contract to perform the desired work and includes the items identified in the following paragraphs in the order listed. The information included in Volume I will not be evaluated for purposes of selection. However, failure to include information required in Volume I may result in a proposal being considered materially deficient and out of consideration.

- (a) The Offeror shall provide the administrative information, as required by the solicitation's Section L provision FAR 52.215-1, *Instructions to Offerors – Competitive Acquisition*, paragraph (c) (2), along with the information requested in Section G, G-3, *Contractor Contact*, and Section G, G-6, *Responsible Corporate Official*, as the first page of Volume I.
- (b) Section A of this solicitation contains an SF 33 for the Contract to be awarded under this solicitation. Offerors must submit one (1) original signed copy of the SF 33 document, which is fully compliant with the requirements of this solicitation provision.
 - (1) The person signing the SF 33 must have the authority to commit the Offeror to all of the terms and conditions of the resulting Contract (See Section L, L-21, *Content of Resulting Contract*), fully recognizing that the Government intends to make an award without discussions. Whenever the words "Solicitation No. DE-SOL-0008470" "Request For Proposal No. DE-SOL-0008470" or "RFP No. DE-SOL-0008470" appear in the Contract resulting from this solicitation, they shall be deemed to read "Contract No. [insert Contract number]" in the signed Contract for the management and operation of the Sandia National Laboratories.

- (2) In Block 14 of each SF 33, the Offeror must acknowledge receipt of all amendments to the solicitation's Section L provision FAR 52.215-1, *Instructions to Offerors – Competitive Acquisition*.
- (3) By signing and submitting the SF 33, the Offeror commits to accept the resulting Contract (See Section L, L-21, *Content of Resulting Contract*) as written and to comply with the other provisions of the solicitation. Any exceptions or deviations by the Offeror to the terms and conditions stated in this solicitation for inclusion in the resulting Contract may make the offer unacceptable for award without discussions.
- (c) The Offeror shall submit a fully completed Section K, *Representations, Certifications, and Other Statements of Offerors*. The parent organization of each member of a "contractor team arrangement," if proposed, must separately complete, sign, and submit the Section K, *Representations, Certifications, and Other Statements of Offerors*.
- (d) The Offeror shall be a university or consortium of universities, other not-for-profit or nonprofit organization, or an industrial firm, as an autonomous organization or as an identifiable separate operating unit of a parent organization. The Offeror shall submit a fully completed and executed Performance Guarantee Agreement(s) (see Section G, G-4, *Performance Guarantee(s)*) for each teaming member (excluding subcontractors) or parent organization. Section L, Attachment A, *Performance Guarantee Agreement(s)*, contains the minimum Performance Guarantee Agreement conditions acceptable to DOE/NNSA. This agreement will become part of the resulting Contract at Section J, Appendix I, *Performance Guarantee Agreement(s)*. If the Offeror is organized as a separate legal entity, the Offeror shall submit the last three annual reports (i.e. business reports) for the parent organization(s) providing the Performance Guarantee Agreement(s). Annual reports shall be submitted electronically through FedConnect and on the flash drive. Offerors do not need to provide copies of annual reports in the hard copy submission. Annual reports may be submitted as an attachment to Volume I, so long as a reference to these attachments appears in the order where the information would have been included. The Offeror shall submit evidence that the "the legal entity submitting the offer" is legally established (see Section L, L-13(b)).
- (e) The Offeror shall submit a Small Business Subcontracting Plan for Government fiscal year 2017, which contains all the elements required by Section I clause FAR 52.219-9, *Small Business Subcontracting Plan*. Section L, Attachment C, *Instructions for Small Business Subcontracting Plan*, provides an outline and instructions for preparing the Plan. The Contracting Officer, prior to contract award, must approve the Small Business Plan that will become part of Section J, Appendix E, *Small Business Subcontracting Plan*. Annual Plans for future fiscal years shall be incorporated into the Contract by a separate supplemental agreement contract modification. Consideration should be given to the historical subcontracting performance along with the current year subcontracting goals for the Site, as provided on the website, <http://nnsa.energy.gov/aboutus/ouoperations/apm/majcontrsolicitation/snlcomp>

L-15 PROPOSAL PREPARATION INSTRUCTIONS – VOLUME II, TECHNICAL AND MANAGEMENT INFORMATION

A Cross Reference Matrix is located at Section L, Attachment D, Cross Reference Matrix. This matrix will provide a crosswalk between the evaluation criteria in Section L and Section M, with the Offeror's proposal. The Offeror shall complete the "proposal" column of this matrix with the proposal page and paragraph number where information is located as determined by the Offeror. This matrix is for informational purposes to assist the Government in locating information in the proposal.

The Offeror shall provide the following information for the Volume II portion of the proposal.

(a) Criterion 1: PAST PERFORMANCE

The Offeror shall provide past performance information, reflecting performance similar in size, scope, and complexity to the portions of the Statement of Work the Offeror (or team member) is proposed to perform and the Offeror's ability to successfully perform the Statement of Work (SOW). If the Offeror is a proposing team member or subcontractor to perform or be responsible for a section of the SOW, the Offeror shall identify the section or sections of the SOW (include task area from SOW) each team member is proposed to perform or for which it is responsible.

The Offeror shall use the form at Section L, Attachment E, Past Performance Information Form (PPIF). With each PPIF, the Offeror shall submit copies of any award fee determinations, performance evaluation reports, small business achievement such as SF294 and SF295 or other documentation that reflects the formal performance assessments of the Offeror by its customer on the performance cited in the PPIF. ** Note: The Government will obtain CPARs from the Past Performance Information Retrieval System (PPIRS). Only submit this document if not contained in PPIRS.

The Offeror shall describe at least one, but no more than three contracts for each proposed team member. Only one contract shall be described per PPIF. For example, a prime Contractor with two subcontractors shall describe no more than nine contracts (each on a separate PPIF for a total of no more than nine PPIFs). Two teaming partners and two subcontractors shall describe no more than 12 contracts (each on a separate PPIF for a total of no more than 12 PPIFs). Contracts listed may include contracts with federal, state, and local Government, and contracts with commercial customers. The performance cited must only include past performance, which was performed for at least nine months during the five years preceding the due date for proposals specified in this RFP will be considered current and will be evaluated. Offeror shall provide performance that is similar in size, scope and complexity of the requirements in the Statement of Work, Chapter II, Work Scope Structure. More relevant past performance will be viewed as a greater indicator of an Offeror's ability to successfully perform than less relevant past performance. With respect to tasks within the Statement of Work for which only the incumbent contractor would have direct past performance, the Government will evaluate the degree of relevance of any analogous past performance such as work on other major weapons systems, work relating to nonproliferation of nuclear, radiological, chemical or biological weapons and related programs around the world, and work relating to safeguard and security technology

programs involving high hazard nuclear materials. Offerors should specifically demonstrate in detail how the proposed past performance is relevant and how it qualifies the offeror to successfully perform the applicable sections of the Statement of Work.

The Offeror shall submit all PPIFs and performance assessments by the date and time for receipt of proposals, as these documents are subject to the late proposals provisions at paragraph (c) of L-2, FAR 52.215-1 Instructions to Offerors -- Competitive Acquisition (Jan 2004). The Offeror shall provide the Past Performance Cover Letter and Questionnaire at Section L, Attachment F, to each technical and contracting point of contact on the PPIF. These points of contact shall return the completed Past Performance Questionnaires directly to the government by email to SEB6@nnsa.doe.gov, Attn: Sandra Caesar, M&OCB, Contracting Officer. The completed Past Performance Questionnaires should be received by the Government before the due date for receipt of proposals and can be combined into one document for submission. However, the Past Performance Questionnaires are not subject to the late proposals provisions at paragraph (c) of L-2, FAR 52.215-1 Instructions to Offerors -- Competitive Acquisition (Jan 2004). Prior to the submittal of the PPIFs, the Offeror shall also advise the technical and contracting points of contact identified on each PPIF that the Government may contact them to obtain additional past performance information or clarification of past performance information, including information provided via completed Past Performance Questionnaires.

The Offeror shall also submit for each team member, by the date for receipt of proposals, a list of all contracts terminated prior to the planned completion date for any reason whether unilateral or bilateral, and (whether partially or completely) within the five years preceding the RFP response due date, as this information is subject to the late proposals provisions at paragraph (c) of L-2, FAR 52.215-1 Instructions to Offerors -- Competitive Acquisition (Jan 2004). For each terminated contract identified in a team member's list, the Offeror shall provide the following information: the dollar amount of the contract, the party contracted with, a brief description of the work, the reason for termination, and the name and telephone number of the customer's contracting official for the contract. If no contract was terminated for any member of the Offeror's team, a statement to that effect is required in lieu of a list of terminated contracts.

PPIFs, performance assessments, small business achievements (SF294 and SF295) and information concerning terminated contracts shall be included as a separate Appendix to Volume II. Only the PPIF form and any additional pages attached to it in accordance with the instructions at Section L, Attachment E, Past Performance Information Form, is subject to the eight-page limitation; performance assessments, small business achievement and information concerning terminated contracts are *excluded* from the Volume II page count limitation.

Note: Past performance information will be used for the best value decision, as well as for the responsibility determination. The Government may obtain past performance information from other sources.

(b) Criterion 2: LABORATORY ORGANIZATION AND QUALIFICATIONS OF KEY PERSONNEL

(1) The Offeror shall describe its proposed organizational structure (including an organizational chart) to manage the Sandia National Laboratories, particularly with respect to performance of the Statement of Work, Chapter II, and the following:

- (i) The rationale for the organizational structure;
- (ii) Individual roles, responsibilities, and lines of authority to include Key Personnel and managers that report directly to any Key Person (only Key Personnel must be named);
- (iii) A description of the structure, composition, duties of the involved organization(s), and any resources available outside of the site to ensure performance under the Contract without loss of efficiency, such as universities.
- (iv) How the proposed organizational structure ensures coherent governance across the Laboratories.

(2) Key Personnel consist of the Laboratory Director, personnel with direct responsibility for performance of the Statement of Work, Chapter II, and other staff members the Offeror considers key to perform the requirement and managers that report to Key personnel. The Offeror has the flexibility in determining which positions they consider key to perform the Statement of Work. The Offeror shall submit written resumes addressing the elements described below, for all Key Personnel.

RESUME ELEMENTS

1. Name of Offeror:
2. Name of Key Person:
3. Proposed Position:
4. Duties and Responsibilities in Proposed Position including elements of the Statement of Work assigned:
5. Chronological Work History: Start with current position and work backwards. A. Name and Address of Firm: B. Dates of Employment: C. Position(s) Held: D. Name, Title, Phone Number, and Email of Supervisor: E. General Summary: <i>Address the Key Person's expertise and experience in: leading and/or managing work similar in size, scope or complexity to the SOW, for the position proposed</i>
6. Education: <i>List degree(s); Discipline(s); Year(s); and Institution(s)</i>
7. Citizenship:
8. Level of Security Clearance (if any):
9. References: <i>Name, title, address, current telephone number, e-mail. The proposed Key Personnel should list three references. It is the Government's</i>

<i>preference that Offerors provide references that are not currently Federal employees</i>
Signature of Key Person:
Include the following statement
By submission of this information, the Key Person and Offeror authorize DOE/NNSA to contact references and previous employers provided to verify accuracy.

By submission of each resume, the Key Person and Offeror authorize DOE/NNSA to contact any references and previous employers to verify accuracy of information provided in the resume. The Offeror shall submit a signed and dated Letter of Commitment in the format provided at Section L, Attachment H, *Sample Letter of Commitment* for each proposed Key Person. The Letter of Commitment shall indicate the Key Person's intention to accept employment, total compensation to include reimbursable and non-reimbursable costs under the contract, benefits, commitment to relocate as necessary, and they shall remain in their position beginning on the effective date of the contract through the first two years of the Base Term. Proposed Key Personnel must be United States citizens, and have current DOE "Q" clearances or be eligible to receive such a clearance. However, a foreign national can be proposed if that person can be granted access to nuclear weapons data following the procedures in DOE O 452.8, *Control of Nuclear Weapon Data*.

The Offeror shall also complete and submit Section L, Attachment B, *Listing of Key Personnel*, with all of the names and titles of the proposed Key Personnel. This will be incorporated into the resulting contract at Appendix D, *Key Personnel*. Listing of Key Personnel, commitment letters, and resumes shall be included as a separate Appendix to Volume II and are *excluded* from the Volume II page count limitation. Each resume shall be limited to three pages, except for the Laboratory Director's resume, which shall be limited to five pages (no cover page for resumes is required). The Government will not evaluate information contained on pages that exceed the page limits.

(c) Criterion 3: SMALL BUSINESS PARTICIPATION

The Offeror shall describe its approach in using small business concerns and the extent to which the Offeror will use small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUB Zone small business concerns, small disadvantaged business concerns, and women-owned small business, concerns in the performance of the Contract. Include a description of the types of work that are intended to be performed by small businesses. Information provided must not contradict the Offeror's Small Business Subcontracting Plan (reference L, L-14(e) above).

L-16 PROPOSAL PREPARATION INSTRUCTIONS – VOLUME III, COST INFORMATION

The Offeror shall provide the following information for the Volume III portion of the proposal. Given the nature of DOE/NNSA's budget-based management and operating contracts, the Offeror will not be required to provide, nor will the Government determine, an overall estimated total value (estimated cost plus fee) for evaluation. However, the Offeror must propose Management Team Costs (Key Personnel and their direct report managers) and Fee. Volume III, Cost Information, shall consist of two sections, as described below. In view of the expectation of adequate price competition, Cost or Pricing Data is not being requested by this RFP. However, the Government reserves the right to request additional supporting information other than certified cost and pricing data if necessary to clarify the Government's understanding of an offeror's cost/price proposal. Such requests for additional information shall be considered "clarifications" as defined by FAR 15.306(a) and shall not be treated as "discussions."

- (a) Management Team Costs: An Offeror's Management Team consists of the Key Personnel and managers who report directly to them consistent with the Offeror's organizational structure. The Offeror shall propose total reimbursable compensation for each proposed position of its Management Team even if that proposed position is not yet staffed by the Offeror. Costs shall be proposed for the Management Team for the Contract's base term years 1 and 2. If the proposed positions of the Management Team, excluding Key Personnel, are not yet staffed by the Offeror, the Offeror shall provide the compensation ranges for all forms of eligible compensation associated for the proposed position. The Government will use the highest salary and other forms of compensation identified in the range for evaluation purposes.

The Offeror shall complete and submit Section L, Attachment G, Management Team Cost Sheet. Section L, Attachment G, Management Team Cost Sheet shall be submitted in Microsoft (MS) Excel format, version 2013 or lower, with formulas and links intact and all cells unprotected. Offerors are responsible for the accuracy of all formulas, links, and all other relationships within the submitted MS Excel electronic spreadsheets and workbooks. This includes reimbursable Management Team costs, including annual base salary, applicable bonuses, incentive pay, and any other forms of compensation including: deferred compensation (e.g., contributions to nonqualified pension plans, including employer contributions to executive only type pension plans such as Supplemental Executive Retirement Plan, Excess Benefit Plans, or Top Hat pension plans), employer contributions to Employee Stock Ownership Plans (ESOPs) and Employer Contributions to Defined Contribution Pension Plans, if applicable. All forms of reimbursable compensation are subject to review and approval post contract award. Bonuses, Incentive pay plans and Deferred Compensation plans are subject to approval in accordance with Section J, Appendix A, Ch. III. Human Resources, 5.2.3, 5.2.4 and 6.1.1 respectively. Where the Offeror has staffed a proposed position, the Offeror shall provide the employee's name and the employee's current base salary and current compensation (including bonus, stock options, etc.). The Offeror shall provide the basis and the assumptions used for the proposed Management Team Costs.

In addition, the Offeror shall include the internal and external equity analysis. The internal equity analysis shall include a description of the methodology for assessing the internal pay equity and relative value of the positions based on the organizational structure and relationship between the key personnel salaries against the managers' salaries who report directly to them. To develop its external equity analysis, the Offeror shall use market survey data to complete the information requested in the External Equity Analysis section of the Section L, Attachment G, Management Team Cost Sheet. The Offeror is not required to provide the backup documents (e.g., the published salary surveys) with their proposal; rather the Offeror shall perform the necessary analysis using the appropriate market surveys (as selected by the Offeror). The Offeror shall note the sources it used to develop its external equity analysis.

The Offeror shall provide supporting documentation, such as the survey source (e.g. World at Work Salary Increase Budget survey), used to develop the escalation rate and explanation for the development and reasonableness of the proposed second year labor escalation rate relating it to industry salary budget forecasts.

Note: The reimbursable compensation for each member of the Offeror's Management Team shall not exceed (i) the Office of Federal Procurement Policy (OFPP) Act benchmark in effect at the time of Contract award or (ii) the revised benchmark amount, in any subsequent government fiscal year, as determined by the applicable Determination of Executive Compensation Benchmark Amount pursuant to Section 39 of the OFPP Act, as amended (41 U.S.C. 1127), as required in FAR Subpart 31.205-6, Compensation for Personal Services; paragraph (p), *Limitation on allowability of compensation* for certain contractor personnel. Any amount in excess of the OFPP benchmark must be excluded from the Offeror's proposed Management Team costs.

- (b) Fee: The Offeror shall use Section L, Attachment I Summary, Fixed Fee and Award Fee Sheet to display its proposed available fixed fee in dollars and award fee in dollars for (CLIN 0001, Management and Operation of SNL) and fixed fee in dollars for (CLIN 0002, Strategic Partnership Projects). CLIN 0003 will be established on a case-by-case basis.

The proposed fixed fee shall not exceed 1.0 % of the estimated cost shown for each Contract Period for CLIN 0001 and CLIN 0002 and the proposed award fee shall not exceed 0.5% of the estimated cost shown for each Contract Period for CLIN 0001. This section of the cost proposal shall include the Offeror's proposed fixed fee rate for CLIN 0002 Strategic Partnership Projects for inclusion at Section B-2, paragraph (c) of the contract. All proposed team members must share in the fee pool, whether they are subcontractors or members of a joint-venture, and no separate fee or profit will be paid on subcontracts with team members. The fee restriction above 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 Clause entitled, Mentor-Protégé Program; (3) a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) competitively awarded subcontracts for commercial items as defined in FAR Subpart 2.1.

Note: The estimated costs shown for each year for CLIN 0002 -- Strategic Partnership Projects in Section L, Attachment I Summary, Fixed Fee and Award Fee Sheet are estimates only, for the purpose of establishing a cost base for the proposed fixed fee. These figures will not be incorporated into the Contract at time of award.

L-17 TIME, DATE, METHOD AND PLACE OFFERS AND PROPOSAL INFORMATION ARE DUE

- (a) Offerors are reminded that submission of their proposal shall be electronically via FedConnect (<https://www.fedconnect.net/Fedconnect/>). The submission through FedConnect is the official response to this RFP and by hard copy as specified in Provision L-13(f). Note: NNSA does not own or operate FedConnect. Offerors shall direct all questions concerning FedConnect to the FedConnect Help Desk. FedConnect Technical Support website: <https://www.fedconnect.net/FedConnect/TechSupport.aspx> For other technical issues or questions, either email support@fedconnect.net or call FedConnect at 1-800-899-6665. The FedConnect Support Center is staffed Monday – Friday 8 a.m. to 8 p.m., EDT, except Federal Holidays.
- (b) All Offers and Proposal Information are due at the time (ET) and date identified on the Standard Form (SF) 33; *Solicitation, Offer and Award* (Section A, Block 9). (CAUTION: See the Solicitation's Section L Provision FAR 52.215-1, *Instructions to Offerors – Competitive Acquisition*, describing treatment of late submissions, modifications, and withdrawals of proposals.).
- (c) Mailed written Offers and Proposal Information shall be marked as follows:

FROM:

MAIL TO:

Sandra Caesar
Contracting Officer
U. S. Department of Energy, National Nuclear Security Administration
M&O Contracting Branch (NA-APM-131)
Office Suite: GTN A-121
19901 Germantown Road
Germantown, MD 20874

Phone: (301) 903-3826
Back-up Phone: (301) 903-2248
E-mail: sandra.caesar@nnsa.doe.gov

MARKED WITH:

SOLICITATION NO. DE-SOL-0008470

To be opened by addressee only.

If the Offeror elects to forward the Offer and the Proposal Information by means other than the U.S. Mail, it assumes the full responsibility of insuring that the Offer is received at the place and by the date and time specified in this solicitation.

- (d) Hand Carried Offers and Proposal Information shall be marked as follows:

FROM:

HAND CARRY TO:

Sandra Caesar
Contracting Officer
U. S. Department of Energy, National Nuclear Security Administration
Office of Acquisition and Project Management
M&O Contracting Branch (NA-APM-131)
Office Suite: GTN A-121
19901 Germantown Road
Germantown, MD 20874
Phone: (301) 903-3826
Back-up Phone: (301) 903-2248

MARKED WITH:

SOLICITATION NO. DE-SOL-0008470

To be opened by addressee only.

It may not be possible to hand carry the package(s) outside of the hours 7:30 a.m. to 4:00 p.m. ET on Federal workdays. Delivery to any other location than that specified herein is unacceptable. If an Offeror plans to hand carry their submission, please contact the Contracting Officer and Contract Specialist via SEB6@nnsa.doe.gov to coordinate. Offerors delivering submissions to Germantown shall enter through the North Entrance off of Maryland Route 118 (Germantown Road) and proceed to the guard station. Offerors with badges will be allowed to enter. Offerors without badges will be required to pull over, have car searched, and provide a point of contact and phone number (Contracting Officer and phone number listed above) for entry. Once through the gate, make an immediate right and alongside the building to the left is the loading dock. Proceed to the loading dock to have the packages scanned. The Contracting Officer and/or the Contract Specialist will come to the loading dock to retrieve the Offeror's

packages after the packages have been scanned. Offerors are therefore encouraged to submit their written Offer via the U.S. Mail.

- (e) Express Mail written Offers and Proposal Information shall be marked as follows:

FROM: _____

TO:
U. S. Department of Energy, National Nuclear Security Administration
Office of Acquisition and Project Management
M&O Contracting Branch (NA-APM-131)
Office Suite: GTN A-121
19901 Germantown Road
Germantown, MD 20874
ATTN: Sandra Caesar, Contracting Officer

MARKED WITH:
SOLICITATION NO. DE-SOL-0008470
To be opened by addressee only.

L-18 OFFER ACCEPTANCE PERIOD

The minimum offer acceptance period is 240 calendar days after the required date for receipt of Offers. Block 12 of the Standard Form 33, *Solicitation, Offer, and Award*, (Section A) does not apply.

L-19 SMALL BUSINESS SIZE INFORMATION AND SET-ASIDE INFORMATION (UNRESTRICTED)

This acquisition is unrestricted and contains no set-aside provisions.

L-20 NUMBER OF AWARDS RESULTING FROM THIS SOLICITATION

One contract award will result from this solicitation.

L-21 CONTENT OF RESULTANT CONTRACT

Any contract awarded as a result of this solicitation will contain Part I -- The Schedule, Part II -- Contract clauses, Part III, Section J -- *List of Documents, Exhibits and Other Attachments*, and Part IV, Section K -- *Representations, Certifications, and Other Statements of Offerors*. The contract awarded will be published in its entirety via the DOE/NNSA website.

L-22 ALTERNATE OFFERS

Alternate offers are not solicited and will not be evaluated.

L-23 FALSE STATEMENTS

Offers and Proposal Information must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements therein is prescribed in 18 U.S.C. 1001.

L-24 EXPENSES RELATED TO OFFER AND OTHER WRITTEN AND ORAL INFORMATION

This solicitation does not commit the Government to pay any costs incurred in the submission of any offer and other written and oral information, or in making necessary studies or designs for the preparation thereof or to acquire or contract for any services.

L-25 ELECTRONIC MEDIA

- (a) In order to further the Government policy of maximizing electronic commerce and making the acquisition process cost effective, electronic media will be used and will be the sole method used for distributing the solicitation and amendments thereto to the public. The solicitation, any amendments and various available reference documents will be posted on FedConnect (<https://www.fedconnect.net/Fedconnect/>) and the DOE/NNSA website at: <http://nnsa.energy.gov/aboutus/ouoperations/apm/majcontrsolicitation/snlcomp>. If there is a discrepancy between the documents posted on FedConnect and the agency website, the document on FedConnect shall govern.
- (b) This electronic medium posting at FedConnect will constitute the official distribution method for this solicitation. All amendments and any other official communications from DOE/NNSA regarding this solicitation will be posted through FedConnect. Offerors and all other interested parties will need to maintain continual surveillance of FedConnect and the website to remain abreast of the latest available information.
- (c) The DOE/NNSA website will contain various available reference documents and links to other organizational websites of interest for the Offeror's information and use in connection with preparing a proposal under this solicitation. Offerors are cautioned that the information, reference documents, and organizational websites contained in the URL address are not intended to be all-inclusive. Offerors are strongly urged to perform their own additional research using these and other available sources.
- (d) No other communication, whether oral or in writing, will modify or supersede the terms of the solicitation.

L-26 COMMITMENT OF GOVERNMENT FUNDS

The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed acquisition. Any other commitment, either explicit or implied, is invalid.

L-27 RESPONSIBLE PROSPECTIVE CONTRACTORS

- (a) The general and additional minimum standards for responsible prospective Contractors set forth at 48 CFR 9.1 and 48 CFR 909.1 applies.
- (b) DOE/NNSA may conduct pre-award surveys in accordance with 48 CFR 9.106 and may solicit from available sources, relevant information concerning the Offeror's record of past performance, and use such information in making determinations of prospective Offeror responsibility.

L-28 DISPOSITION OF OFFERS AND PROPOSAL INFORMATION

Offers and Proposal Information will not be returned (except for timely withdrawals).

L-29 RESTRICTION ON OFFEROR CONTACTS WITH EMPLOYEES OF PREDECESSOR CONTRACTORS

Contacts with employees regarding future employment are permitted; however, such contacts and interviews must take place outside the normal working hours of such employees and at off-site locations. No on-site contacts of any kind with employees of the current incumbent Contractor are permitted related to this solicitation until contract award.

L-30 INSTRUCTIONS FOR SUBMITTING FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI) INFORMATION (Jun 2011)

- (a) The Offeror shall submit FOCI information in accordance with Section K provision DEAR 952.204-73, *Facility Clearance*, and Section I clause DEAR 952.204-2, *Security*, using the Department of Energy (DOE) Electronic FOCI (eFOCI) submission system located at <https://foci.anl.gov/>.
- (b) New users to the eFOCI system will request initial access to the eFOCI system prior to submitting the FOCI information for this solicitation. Offerors should select "NNSA Albuquerque Complex - Acquisition and Project Management (NA-APM)" as the FOCI Office that will review the FOCI Submission. Offerors are encouraged to transmit FOCI information by the deadline for proposal submission. Specific problems maneuvering through the fields within the eFOCI system can be clarified by contacting the eFOCI help desk using guidance and instructions are available on the eFOCI website.
- (c) Electronic signatures are not accepted; therefore, signed originals of any documents requiring signatures to include the SF 328, *Certificate Pertaining to Foreign Interests*, executed in accordance with the instructions on the certification section of the SF 328,

shall be submitted to the Contracting Officer. The SF 328 is required for first time submissions, five (5) year updates or any time there are changes to the SF 328.

- (d) If the Offeror has an active facility clearance with another government agency, provide your commercial and government entity (CAGE) code in lieu of the SF 328.
- (e) If the company has an active DOE facility clearance and is in compliant with regulations, a resubmission is not required. Guidance and instructions are available on the eFOCI website.

L-31 NON-FEDERAL PERSONNEL SUPPORT

Offerors are advised that DOE/NNSA Contractor personnel may assist the Government during the Government's evaluation of proposals. These persons shall be authorized access to only those portions of the proposal data and discussions that are necessary to enable them to provide specific technical advice on specialized matters or on particular problems. These individuals will be required to protect the confidentiality of any specifically identified trade secrets and/or privileged or confidential commercial or financial information obtained as a result of their participation in this evaluation. They shall be expressly prohibited from scoring, ranking, or recommending the selection of a source. Thus, in accordance with FAR 9.505-4(b), Contractor personnel will enter into separate agreements with Offerors to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than for which it was furnished.

L-32 SYSTEM FOR AWARD MANAGEMENT REQUIREMENTS

The Offeror's attention is directed to Section I clause FAR 52.204-7, *System for Award Management* (Jul 2013). FAR 52.204-7 states in part:

- (b)(1) By submission of an offer, the Offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM 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.*
- (d) If the Offeror does not become registered in the SAM 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.*

L-33 OFFEROR INTENTION TO SUBMIT AN OFFER

Complete the following and return VIA E-MAIL to the address below no later than close of business ten (10) business days after the RFP is released.

Solicitation Number DE-SOL-0008470

_____ We do intend to submit an offer.

Name and Address of Firm or Organization (Include Zip Code):

Typed or Printed Name and Title: _____

Date: _____

E-Mail To: SEB6@nnsa.doe.gov
ATTN: Sandra Caesar

L-34 VIRTUAL TOUR AND PRE-PROPOSAL MEETING

The Government is contemplating a pre-proposal meeting, however a specific time for a pre-proposal meeting has not been developed. Please check the DOE/NNSA website for information (see Section L, L-13(e)) above) which will provide specific details. Only individuals representing Offerors who have submitted the Offeror intent form identified at Section L, L-33, *Offeror Intention to Submit an Offer* may attend the pre-proposal meeting. A virtual tour of the Sandia National Laboratory is available at <https://nnsa.energy.gov/aboutus/ouoperations/apm/majcontrsolicitation/snlcomp/virtual-tours>

To allow time for security clearance and other administrative processing, Offeror's must provide the requested information for the pre-proposal meeting as soon as possible, but no later than TBD (information will be provided through FedConnect if a pre-proposal meeting will be conducted).

L-35 LIST OF ATTACHMENTS TO SECTION L

<u>Attachment</u>	<u>Title</u>
A	Performance Guarantee Agreement
B	Listing of Key Personnel
C	Instructions for Small Business Subcontracting Plan
D	Cross Reference Matrix
E	Past Performance Information Form
F	Past Performance Cover Letter and Questionnaire
G	Management Team Cost Sheet
H	Sample Letter of Commitment
I	Summary, Fixed Fee and Award Fee Sheet

SECTION M – EVALUATION FACTORS FOR AWARD

M-1 EVALUATION OF PROPOSALS

- (a) This acquisition will be conducted using the policies and procedures in Federal Acquisition Regulation (FAR) Part 15 and Department of Energy Acquisition Regulation (DEAR) Part 915. The Government will evaluate proposals using the criteria in this Section M and the Source Selection Authority (SSA) will select an Offeror for contract award using the best value analysis described in this Section M.
- (b) The instructions set forth in Section L are designed to provide guidance to the Offeror concerning documentation that will be evaluated by the Government. The Offeror must furnish adequate and specific information in its response. A proposal will be eliminated from further consideration before the initial ratings if the proposal is so grossly and obviously deficient as to be unacceptable on its face. For example, a proposal will be deemed unacceptable if it does not represent a reasonable initial effort to address the essential requirements of the solicitation, or if it clearly demonstrates that the Offeror does not understand the requirements of the solicitation. An overall rating of unsatisfactory in one evaluation criterion may also result in elimination of the proposal from further consideration regardless of the rating of the other criteria. In the event a proposal is rejected, a notice will be sent to the Offeror stating the reason(s) the proposal will not be considered for further evaluation under this solicitation.
- (c) The Government intends to evaluate proposals and award a contract without discussions with Offerors, except clarifications as described in FAR 15.306(a). If the Government requires clarifications or revisions to an Organizational Conflict Of Interest Disclosure, including any mitigation plan, (paragraph (d) below) these will be considered to be clarifications rather than discussions in accordance with FAR 15.306(a). The Government reserves the right to conduct discussions if the Contracting Officer later determines discussions to be necessary. Any exceptions or deviations by the Offeror to the terms and conditions stated in this solicitation for inclusion in the resulting contract may make the offer unacceptable for award without discussions. If an Offeror proposes exceptions to the terms and conditions of the Contract, the Government may make an award without discussions to another Offeror that did not take exception to the terms and conditions of the Contract.
- (d) Prior to selection for award by the SSA, the Contracting Officer will make a finding whether any possible Organizational Conflict of Interest (OCI) exists with respect to the apparent successful Offeror or whether there is little or no likelihood that such conflict exists. In making this finding, the Contracting Officer will consider the Offeror's representation and disclosure statement required by the contract's Section K provision DEAR 952.209-8, *Organizational Conflicts Of Interest Disclosure-Advisory and Assistance Services* and the Government may also consider information from other sources. Subparagraph (c)(1) of DEAR 952.209-8, *Organizational Conflicts Of Interest Disclosure-Advisory And Assistance Services*, requires a statement, if applicable, from the Offeror of any past, present, or currently planned financial, contractual,

organizational, or other interests relating to the statement of work. The Offeror should note that paragraph (c) (1) requires that the Offeror provide enough information in the statement to allow a meaningful evaluation by the Government of the potential effect of the interest on the performance of the statement of work. For any actual or significant potential organizational conflict of interest, the Offeror shall also submit a plan of actions/activities to avoid, neutralize, or mitigate such conflict. An award will be made if there is no OCI or if any OCI can be appropriately avoided, neutralized, mitigated, or if a waiver request submitted pursuant to FAR 9.503 is approved.

- (e) Federal Law prohibits the award of a contract under a national security program to a company owned by an entity controlled by a foreign government unless the Secretary of Energy grants a waiver. In making this determination, the Government will consider the Offeror's certification required by the contract's Section K provision, *Certificate Pertaining to Foreign Interests*.
- (f) A Performance Guarantee Agreement in accordance with the requirements of the Solicitation's Section L provision L-12, *Requirement for Guarantee of Performance*, will be a condition of the award of this Contract, if applicable.

M-2 BASIS FOR CONTRACT AWARD

The Government intends to award one contract to the responsible Offeror whose proposal is responsive to the solicitation and is determined to be the best value to the Government. Selection of the best value to the Government will be achieved through a process of evaluating each Offeror's proposal against the evaluation criteria described below. The Technical and Management Criteria in M-3 will be adjectivally rated. The Cost Criterion in M-4 will not be rated, however these costs will be used in determining the "best-value" to the Government. In determining the best value to the Government, the Technical and Management Criteria, when combined, are significantly more important than the Cost Criterion. The Government is more concerned with obtaining a superior Technical and Management proposal than making an award at the lowest evaluated cost. However, the Government will not make an award at a price premium it considers disproportionate to the benefits associated with the evaluated superiority of one Technical and Management proposal over another. Thus, to the extent that Offerors' Technical and Management proposals are evaluated as close or similar in merit, the evaluated cost is more likely to be a determining factor.

M-3 TECHNICAL AND MANAGEMENT CRITERIA

The following criteria are listed in descending order of importance. Criterion 1 is more important than Criteria 2 and 3 combined, and Criterion 2 is more important than Criterion 3. Individual items or evaluation considerations within a Technical and Management criterion (e.g., Criterion 2 includes items (1) and (2) which are not listed in order of importance and will not be individually weighted, but rather will be considered as a whole in developing an overall adjectival rating for that criterion). The individual items are not "sub-factors" as used in FAR 15.304.

(a) Criterion 1: PAST PERFORMANCE

The Government will evaluate the Offeror's relevant past performance during the last five-years, as submitted by the Offeror through the completion and submission of Past Performance Information Forms, performance assessments, small business achievement, as well as relevant past performance information that the Government may obtain from any other sources to determine the degree to which the relevant past performance demonstrates the Offeror's ability to successfully perform the Statement of Work (SOW). Only past performance which was performed for at least nine months during the five years preceding the due date for proposals specified in this RFP will be considered current and will be evaluated.

The evaluation will consider the relevancy of the Offeror's performance (i.e. how similar the experience reflected in an Offeror's past performance is to the size, scope and complexity of the requirements in the Statement of Work, Chapter II, Work Scope Structure). More relevant past performance will be viewed as a greater indicator of an Offeror's ability to successfully perform than less relevant past performance. With respect to tasks within the Statement of Work for which only the incumbent contractor would have direct past performance, the Government will evaluate the degree of relevance of any analogous past performance such as work on other major weapons systems, work relating to nonproliferation of nuclear, radiological, chemical or biological weapons and related programs around the world and work relating to safeguards and security technology programs involving high hazard nuclear materials. However, each Offeror should specifically demonstrate in detail how the proposed past performance is relevant and how it qualifies the offeror to successfully perform the applicable sections of the Statement of Work.

The evaluation may also consider the source of the information, context of the data, and general trends in the contractor's performance. Where an Offeror has proposed a team member to perform or be responsible for only specific section of the SOW, the relevance of that entity's past performance will be determined based on consideration of the specific section of SOW the team member is proposed to perform or to be responsible for, as opposed to the entire SOW.

Past Performance which arises from or relates to the performance of another DOE or NNSA Management and Operating Contract (M&O contract) by companies affiliated with any offeror(s) (or team members thereof), such as joint ventures affiliated with one or more of the same corporate parents or sister companies as any of the offerors (or of any team members), shall be automatically imputed to all affiliated offerors (or affiliated team members) on an equal basis, regardless of the roles or responsibilities of the affiliated company under the other M&O contract. All other past performance of affiliated companies shall be imputed to the offeror (or team member) only to the extent that the past performance of such affiliated companies is likely to affect the performance of the contract as demonstrated in the proposal or as otherwise may be determined by the Government.

In the case of an Offeror (or team member) without a record of relevant past performance or for whom information on relevant past performance is not available, the Offeror (or team member) will be evaluated neither favorably nor unfavorably for this criterion, and will be assigned a neutral rating. Offeror for whom adverse past performance information is obtained will be given an opportunity to address such adverse past performance information if they have not already

had such an opportunity. Such exchanges shall be considered “clarifications” in accordance with FAR 15.306.

(b) Criterion 2: LABORATORY ORGANIZATION AND QUALIFICATIONS OF KEY PERSONNEL

The Government will evaluate the Offeror’s Laboratory Organization, Key Personnel resumes, and information provided by Key Personnel references to consider the extent to which the Offeror demonstrates:

- (1) An effective, coherent organizational structure to manage and govern the Sandia National Laboratories, particularly with respect to performance of the Statement of Work, Chapter II and it’s the use of universities. Offerors that propose a simple organizational structure with less complex relationships may be evaluated more favorably.
- (2) Each Key Person’s expertise, experience, leadership, and/or managing ability in work of similar size, scope, and complexity to the SOW for the position proposed.

In addition to the references provided in the Key Personnel resumes (see Section L, L-15(b), Criterion 2, paragraph (2)), the Government may use any information received from other sources, references or third parties as part of its evaluation of Key Personnel, However the Government is under no obligation to obtain or consider additional information and may do so at its sole discretion. Failure to submit the required letters of commitment may result in the Key Person not being evaluated, negatively affecting the evaluation results for this criterion. Proposed Key Personnel who are under a service commitment for the performance of another NNSA M&O contract at the projected time of contract award (i.e. Dec 2016) will not be considered, which may negatively impact the Offeror’s evaluation or make the proposal unacceptable.

(c) Criterion 3: SMALL BUSINESS PARTICIPATION

The Government will evaluate the subcontracting plan and the proposal to determine the effectiveness of the Offeror's approach in using small businesses and the extent of participation of small business concerns, including veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUB Zone small business concerns, small disadvantaged business concerns, and women-owned small business concerns, in performance of the contract. This information shall not contradict the information provided in the offeror’s subcontracting plan found in Section L – Attachment C.

M-4 COST CRITERION

The Management Team costs (Section L, L-16) will be evaluated for cost reasonableness and realism but will not be adjectively rated. The Government may use any of the analysis techniques specified in FAR 15.404-1 to determine reasonableness and realism. The Government will consider information submitted in response to Section, L-15, Criterion 2,

Laboratory Organization and Qualifications of Key Personnel, in its evaluation of Management Team costs, and may consider other information obtained from other sources.

For the best value determination as described in M-2 above, the total evaluated price will include the reimbursable Management Team costs for Base Year 1 and Base Year 2; and the total proposed fixed fee and award fee for CLIN 0001 and the proposed fixed fee for CLIN 0002 for FY 2017 through FY 2027. All proposed team members must share in the fee pool, whether they are subcontractor or members of a joint-venture and no separate fee or profit will be paid on subcontracts with team members. The fee restriction above 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 Clause entitled, Mentor-Protégé Program; (3) a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) competitively awarded subcontracts for commercial items as defined in FAR Subpart 2.1. The Government will not award a contract to an Offeror whose Management Team costs are determined to be unreasonable.