

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 271
2. AMENDMENT/MODIFICATION NO. A051	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO. 06OR22518.005	5. PROJECT NO. (If applicable)	
6. ISSUED BY U. S. Department of Energy Oak Ridge Office Procurement and Contracts Division, AD-423 Oak Ridge, TN 37831-8758	CODE	7. ADMINISTERED BY (If other than Item 6)	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Foster Wheeler Environmental Corporation Perryville Corporate Park Clinton, NJ 08809-4000		<input checked="" type="checkbox"/>	9A. AMENDMENT OF SOLICITATION NO.	
		<input type="checkbox"/>	9B. DATED (SEE ITEM 11)	
		<input checked="" type="checkbox"/>	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC05-98OR22516	
CODE			10B. DATED (SEE ITEM 13) August 20, 1998	
FACILITY CODE				

11. THIS ITEM APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

Fund: 01250 Year: 06 Alottee: 30 Reporting Entity: 471999 Object Class: 25200 Program: 1110902 Project: 0001121 Local Use: 0471189

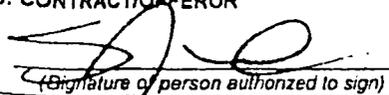
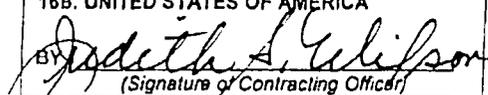
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (Specify type of modification and authority) Mutual Agreement
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>2</u> copies to the issuing office.	

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

See page 2.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) STEVEN FRISD, CEO		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Judith S. Wilson, Contracting Officer	
15B. CONTRACT/OFFEROR BY  (Signature of person authorized to sign)	15C. DATE SIGNED 9/12/06	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 9/12/06

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

The purpose of this modification is to convert the contract from fixed price to a cost plus fixed fee contract. As such, the following terms and conditions apply:

- 1) Convert the privatization fixed price contract to a cost reimbursement fixed fee contract retroactive to May 15, 2006. In consideration for this conversion, the Contractor agrees to waive all claims, demands, causes of action, appeals, and requests for equitable adjustments arising under or related to this contract, whether known or unknown at the time of execution of this modification, that are based on any actions or omissions of the Government or its contractors that occurred on or before the date of execution of this modification. Further, at no additional cost to the Government, the Contractor will transfer clear title to the Transuranic Waste Processing Center (Facilities) as defined in Clause H-1 and transfer all Intellectual Property, Technical Data, and Equipment as defined in Clause H-1 associated with and necessary to operate and maintain the Facilities to Department of Energy (DOE). The changes effected by this modification shall not give rise to any requests for equitable adjustment, claims, demands, appeals, or causes of action by the Contractor, provided that this shall not affect the Contractor's rights with respect to reimbursement of allowable costs for the period May 15, 2006 to the date of this modification.

- 2) Conclude remaining DOE financial responsibilities for recovery of capital expenditures of the Contractor. The original contract provided recovery of capital expenditures in the amount of [REDACTED] to be paid upon demonstrating that systems are operational. To date the contractor has been paid [REDACTED] leaving a balance of [REDACTED]. Of this amount [REDACTED] was to be paid to the Contractor upon successfully obtaining Waste Isolation Pilot Plant (WIPP) certification; however, as a result of the negotiations leading to this conversion, it has been determined that the Central Characterization Program (CCP) will perform all waste certification activities for disposal of Transuranic (TRU) waste at WIPP. Consequently, the Contractor will no longer be required to obtain final WIPP certification. The essential requirements for payment of [REDACTED] have been met by the Contractor and this sum shall be paid upon execution of the Final Conversion Modification (A051).

The remaining balance of [REDACTED] is dedicated to the build-out of facilities and systems for RH TRU waste operations. Of this amount, [REDACTED] shall be paid upon execution of the Final Conversion Modification (A051) for construction activities previously completed for RH waste. The remaining [REDACTED] will not be paid under the fixed price contract. The reimbursement of costs associated with the build-out of facilities and systems for RH TRU waste operations will be made pursuant to provisions of the cost reimbursement contract in accordance with paragraph 4) below and clause B-2. Upon payment of the [REDACTED] and [REDACTED] the Contractor agrees that payment of capital recovery is complete.

d) the Contractor will initiate the engineering study for the Phase II construction build out;

e) the Contractor will cooperate with DOE and its auditors to finalize the financial audits to calculate acceptable indirect and other rates;

f) the Contractor will submit subcontract agreements for DOE written consent;

g) the Contractor will transfer MCS/NFT subcontracts to CCP; and

h) the Contractor and DOE will conclude any other related administrative matters.

4) Recognize that the Contractor shall complete the Phase II RH construction build-out as described in Section C III of the contract at cost without fee for costs incurred equal to or less than [REDACTED]. Both parties agree to negotiate specific technical details during transition after receipt of the engineering study referenced in 3d above.

5) Acknowledge consequences of failure to transfer title by the required date. If the Contractor fails to transfer clear title at no cost or fulfill the requirements of paragraphs 3a and 3b within the time periods there provided, or any extension of such dates by the Contracting Officer, the Contracting Officer may rescind this modification at no cost to the Government and reinstate the Contract as it existed on May 14, 2006, including fixed price terms. Any such rescission shall have the effect of nullifying this modification in all respects, including nullification of any releases given herein by the Contractor.

The Contractor shall be promptly informed in writing when the Contractor has fulfilled the requirements of paragraphs 3 a) and b) above to the reasonable satisfaction of the Contracting Officer.

6) Obligate funds in the amount of [REDACTED] bringing the total obligations to [REDACTED]

The above contract terms are effective and binding upon both parties, whether or not incorporated within the body of the modified contract. As a result of the conversion to a cost plus fixed fee type contract pursuant to the terms of A051, the contract is restated in its entirety as attached hereto. This reformed contract covers the period of May 15, 2006 forward.

- 3) Establish a transition period of no more than 60 calendar days after the effective date of this modification. During the transition period, the following actions will be completed:

a) the Contractor shall provide to DOE a final description and inventory of all TRU Waste Facilities, Equipment, Technical Data, and Intellectual Property incorporated, specifically used, produced or acquired under the FWENC TRU Waste Contract and its subcontracts that is required to be submitted to DOE no later than 35 calendar days after the Final Conversion Modification is executed, unless extended by the Contracting Officer. The final description and inventory shall be subject to DOE approval which shall not be unreasonably withheld. DOE will review the Contractor's final description and inventory list in good faith and make every reasonable effort to complete its review within 10 business days after submission or resubmission, if necessary. The Contracting Officer shall extend the time periods identified herein day for day to the extent DOE's decision to approve or disapprove each such submission or resubmission exceeds 10 calendar days. The Contracting Officer shall make every reasonable effort to identify specifically to the Contractor any deficiencies in the Contractor's submission or re-submissions of the final description and inventory. Provided the Contractor is making diligent efforts to provide a compliant final description and inventory, the Contracting Officer shall grant reasonable extensions to the time periods identified herein as needed to complete correction of deficiencies in such submissions or resubmissions;

b) Upon receiving DOE approval of the final description and inventory, the Contractor will execute the agreement(s) whereby the Contractor, as aforementioned in paragraph 1), transfers title to the Facilities and Equipment, and transfers title or appropriate rights to all Intellectual Property and transfers custody of Technical Data (as defined in Clause H-1) associated with and necessary to operate and maintain the Facilities to DOE. The Contracting Officer shall make every reasonable effort to identify specifically to the Contractor any deficiencies in title transfer documentation. Provided the Contractor is making diligent efforts to provide acceptable title transfer documentation, the Contracting Officer shall grant reasonable extensions to the time periods identified herein as needed to complete correction of deficiencies in such documentation. The effective date of said transfers shall be no later than 60 calendar days after execution of the Final Conversion Modification unless extended by the Contracting Officer;

c) the Contractor will assist DOE in transitioning responsibilities for security of the TRU Site to the DOE/ORO protective force contractor;

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SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B-1. ORO B01 Items Being Acquired (APR 1984)

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance and providing the services specified in the Statement of Work in Section C.

B-2. Schedule, Estimated Cost and Fixed Fee (AUG 2006)

Price Schedule Base Period (May 15, 2006 – May 14, 2008)

Estimated Cost: [REDACTED]
 Estimated Fixed Fee: [REDACTED]
 Total Estimated Cost: [REDACTED]

Included in the Price Schedule above is construction work undertaken after May 15, 2006, for the completion of facilities for RH processing, not to exceed [REDACTED] to be completed at 0% fee.

The option period schedule (May 15, 2008 – May 14, 2009) is described in B-3.

B-3. ORO B35 Option(S) To Extend the Contract (CPFF) (MAY 1997)

- (a) In order to demonstrate the value it places on quality performance, the Department has provided a mechanism for continuing a contractual relationship with a successful contractor that performs at a level which meets or exceeds quality performance expectations as communicated to the Contractor, in writing, by the contracting officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Contractor's performance under the contract.
- (b) This contract shall be extended, at the unilateral option of the Government in accordance with FAR 52.217-9 set forth in Section I. Further, the Contractor agrees that the performance under option(s) which are exercised shall be accomplished within the following estimated cost and fixed fee.

(1) Option Period (May 15, 2008 – May 14, 2009)

Estimated Cost: [REDACTED]
 Estimated Fixed Fee: [REDACTED]
 Total Estimated Cost: [REDACTED]

- (c) Prior to the exercise of any Option Period the Government may request an updated cost proposal for that Option Period and conduct a complete audit of the proposal. The Government reserves the right, as a result of the audit, to negotiate downward adjustments to estimated cost and fixed fee for the Option Period in question. The adjustment(s) will be incorporated into the contract by modification.

B-4. Obligation of Funds (AUG 2006)

Pursuant to the Limitation of Funds clause, the total amount currently obligated to the contract is [REDACTED]. Of this amount, [REDACTED] is allocated for the fixed price portion of this contract through and including payments made pursuant to former Section B-2, Price in effect prior to the Final Conversion Modification, including payments made between May 15, 2006 and the date of the Final Conversion Modification. The remaining [REDACTED] is allocated for the cost reimbursement portion of this contract, commencing May 15, 2006, and is estimated to be sufficient to fund continued performance until October 2006.

B-5. Capital Recovery (AUG 2006)

The original contract provided recovery of capital expenditures in the amount of [REDACTED] to be paid upon demonstrating that systems are operational. To date the contractor has been paid [REDACTED] leaving a balance of [REDACTED]. Of this amount [REDACTED] was to be paid to the Contractor upon successfully obtaining Waste Isolation Pilot Plant (WIPP) certification; however, as a result of the negotiations leading to this conversion, it has been determined that the Central Characterization Program (CCP) will perform all waste certification activities for disposal of Transuranic (TRU) waste at WIPP. Consequently, the Contractor will no longer be required to obtain final WIPP certification. The essential requirements for payment of [REDACTED] have been met by the contractor and shall be paid upon execution of the Final Conversion Modification (A051).

The remaining balance of [REDACTED] is dedicated to the build-out of facilities and systems for RH TRU waste operations. Of this amount, [REDACTED] shall be paid upon execution of the Final Conversion Modification (A051) for construction activities previously completed for RH waste. The remaining [REDACTED] will not be paid under the fixed price contract. The reimbursement of costs associated with cost the build-out of facilities and systems for RH TRU waste operations will be made pursuant to provisions of the cost reimbursement contract in accordance with paragraph 4) of the purpose of the modification and clause B-2. Upon payment of the [REDACTED] and [REDACTED] the contractor agrees that payment of capital recovery is complete.

B-6. Pre-existing Agreements No Longer Applicable

The performance and payment bonds required for Phase I per former I-58, dated September 2, 1998, and issued by National Union Fire Insurance Co. of Pittsburgh, PA and Federal Insurance Co. as sureties, are released effective upon execution of the Final Conversion Modification, and the originals of such bonds shall be returned to the Contractor. The parent company guarantee dated March 2, 1998, provided on behalf of Contractor shall similarly be released effective upon execution of Final Conversion Modification and the original guarantee shall be returned to the contractor.

The Site Lease (Real Estate Lease No. REORDOER-1-01-0502), dated December 13, 2000, and executed pursuant to former clause H-7, Site Lease, shall terminate by mutual agreement, effective upon execution of the title transfer of the TRU Waste Processing Center, and neither Grantor nor

Grantee under the Site Lease shall have any further or future rights or obligations with respect to the Site Lease. The Government accepts return of the leased premises in "as is" condition.

B-7 Type of Contract (AUG 2006)

The contract type is cost plus fixed fee with a term form. The level of effort the contractor shall provide is defined in Section C, Statement of Work; however, DOE may elect to accelerate or decelerate work. All work is subject to the availability of funds.

SECTION C – STATEMENT OF WORK

I. OBJECTIVE/INTRODUCTION

The objective of this contract is to operate and manage the TRU Waste Processing Center (TWPC) in concert with the Central Characterization Project (CCP) to enable the processing of Transuranic (TRU) and low-level waste for disposal. Specified Oak Ridge National Laboratory (ORNL) waste streams will be processed. Additionally, the Department of Energy (DOE) may require processing of other TRU or LL waste originating from other sites. The contractor, with CCP as necessary, shall also be required to interface with other DOE contractors and sites for shipment and delivery of waste to the TWPC for processing, and for transport of waste to the Waste Isolation Pilot Plant (WIPP) or other appropriate disposal site.

II. WASTE TYPES

The wastes to be managed under this contract include Contact Handled (CH) and Remote Handled (RH) TRU waste currently in storage on or to be generated from ongoing activities on the Oak Ridge Reservation or other sites. Additionally, the Contractor will process and dispose of Low Level Waste (LLW) and Mixed Low Level Waste (MLLW) resulting from the processing of CH and RH TRU waste. The primary waste streams include:

- Transuranic containerized debris and soils wastes
- Transuranic sludge and supernate; and
- Low level waste and mixed low level waste resulting from processing TRU waste.

TRU waste contains alpha-emitting radionuclides with an atomic number greater than 92 and half-lives greater than 20 years, at concentrations greater than 100 nCi/g. CH TRU wastes have a dose rate at the container surface of 200 millirad (mR/h) or less, while RH TRU wastes have a dose rate at the container surface greater than 200 mR/h.

A. CONTACT HANDLED DEBRIS AND SOILS WASTE

Approximately 1,600 cubic meters of CH TRU debris and soils waste are currently available for processing. Additional waste may be required to be processed as part of this contract. The CH waste is presently contained in boxes and drums. The drums primarily range in size from 55 to 110 gals and the boxes range in size up to approximately 10 ft x 8ft x 6 ft. Most of the waste is a heterogeneous mixture primarily consisting of glass, plastic, tubing, filters and filter housings, pumps, protective clothing, metal cans/drums, gloveboxes, other boxes and tanks, cloth and other miscellaneous items such as wood, carbon, cloth wipes, and sample bottles. In addition some of the waste containers contain soils or other homogenous wastes. Other items associated with glovebox operations, laboratory operations, hot cell clean-up operations, equipment repair and maintenance, sources, and radiochemical processing for isotope separation and purification are expected to be present. The DOE expects the CH TRU waste may contain free liquids, hazardous material such as mercury (primarily from light bulbs, thermometers and other lab waste), lead (primarily as shielding), and oil/solvents (i.e., cleaning rags). There is potential that a considerable portion of the RH TRU debris and soils waste may be determined during processing to be CH TRU waste.

for the duration required to completely remove and process the RH TRU sludges. Transfer lines were partially installed prior to the start of supernate operations in January 2004.

Access to internal tank piping is provided by the MVST Pipe and Valve Vault (P&VV). General area beta-gamma radiation readings in the P&VV have been measured at levels up to 500 mR/hr. Direct contact beta-gamma radiation readings with the piping and equipment in the P&VV have been measured as high as 5 R/hr. (All alpha smear survey levels are less than 20 dpm, however, the beta smear surveys are much greater). The P&VV is currently posted as a high contamination area due to the results of the beta smear surveys. Limited gamma radiation readings have been taken at various levels above a number of the tanks. The maximum reading observed at the top of the vault roof with the shield plug removed was 1.0 R/hour with a maximum reading at the top of a tank manhole being ~5.0 R/hour. Radiation levels may be higher. The tanks are totally enclosed in concrete vaults that are separate and shielded from the P&VV.

The sludge is alkaline with pH ranges of approximately 7 to 13.0. The sludge contains some heavy metals identified under Resource Conservation and Recovery Act (RCRA) as hazardous, including cadmium, chromium, lead, and mercury. Some leachability laboratory work has been performed but a Toxicity Characteristic Leaching Procedure determination has not been completed on the waste sludge to determine if it meets the definition of hazardous waste under RCRA. Since the MVSTs are part of the ORNL low-level wastewater system, they are presently excluded from RCRA permitting under the ORNL Permit by Rule application.

III. DESCRIPTION OF SERVICES

The Contractor will be required to receive and process CH and RH TRU, LL, and MLLW wastes for subsequent disposal at an approved repository. Wastes will consist of debris, soils, supernate, and sludge currently at the Oak Ridge Reservation; forecasted to be generated on the reservation; or transported from other sites as directed by the Contracting Officer Representative (COR). Additionally, the Contractor will process and dispose of LLW and MLLW that result from the processing of CH and RH TRU waste. Waste processing under this work scope includes receipt of waste at the TWPC from other DOE Contractors, repackaging, treatment, and any other actions necessary to prepare the waste for compliant disposal. Waste streams that are difficult to manage in the TWPC may be processed through an alternative processing facility as appropriate. The Contractor will support, as required, CCP's waste characterization and certification activities. After being processed the TRU waste may be returned to compliant interim storage facilities either at the TWPC or at DOE storage facilities until transport to WIPP can be arranged. CCP will be responsible for transportation of TRU waste to the WIPP for disposal. Loading of WIPP-ready waste into TRUPACT-IIs for shipment to WIPP may be accomplished at the TWPC or at the DOE storage facilities. When the WIPP-ready waste is loaded at the TWPC the Contractor will provide support as needed to CCP. All work shall be conducted in a safe and compliant manner, and meet applicable local, state and federal codes and standards.

A. Contractor – CCP Work Scope Division

The Contractor shall coordinate with CCP to operate and schedule activities to facilitate processing of waste for WIPP certification. This includes development of appropriate Memoranda of Understanding,

B. REMOTE HANDLED DEBRIS AND SOILS WASTE

Approximately 750 m³ of RH TRU debris and soils waste are currently available for processing. Additional waste may also be processed under this contract. The majority of this waste is in small containers which have been loaded into concrete casks for shielding. Most of the waste is a heterogeneous mixture primarily consisting of glass, plastic, tubing, filters and filter housings, pumps, protective clothing, metal cans/drums, equipment racks, small boxes and tanks, cloth and other miscellaneous items such as wood, carbon, cloth wipes, and sample bottles. In addition some of the waste containers contain soils or other homogenous wastes. Other items associated with glovebox operations, laboratory operations, hot cell clean-up operations, equipment repair and maintenance, sources, and radiochemical processing for isotope separation and purification are expected to be present.

There are approximately 350 concrete casks currently in storage. They are currently located in storage bunkers or other storage buildings. The casks are of three basic sizes each with a different wall thickness to provide varying amounts of radiation shielding. The outer dimensions of the three casks range from approximately 7 to 8 ½ feet tall and approximately 50 to 55 inches in diameter. Approximately 200 of these casks have recently been exhumed from Solid Waste Storage Area 5 North (SWSA 5N). When buried, the external dose rates of the concrete casks were measured as high as 3500 mR/hr, but higher readings may have existed. Two of the 200 retrieved casks have contact dose rates of 400 and 500 mR/hr maximum. The majority of exhumed casks have contact dose rates well below 100 mR/hr. It is expected that a considerable fraction of the waste that has been managed as RH TRU will found to be CH. The DOE expects the RH debris and soils waste will contain small amounts of hazardous material such as mercury (primarily from light bulbs, thermometers and other lab waste), lead (primarily as shielding), and oil/solvents (i.e., cleaning rags). In addition the RH debris waste may contain free liquids.

Prior to delivery of the concrete casks to the TWPC they will be loaded into a steel overpack by others. Approximately 200 casks (those retrieved from SWSA 5N) have already been loaded into overpacks. The overpacks were designed by the current TWPC contractor to mate with existing TWPC equipment for transferring RH debris and soils waste into the TWPC hot cell. The overpacked casks will be delivered to the TWPC by others.

C. REMOTE HANDLED SLUDGE WASTE

Approximately 2,000 cubic meters (m³) of TRU waste sludge and supernate are currently available for processing. Additional sludge may be processed as part of this contract. The supernate shall be used to mobilize the sludge for transfer to the TWPC. Water may also be used to mobilize the sludge, but the available supernate must be completely expended by the end of sludge processing. The sludge and supernate are contained in stainless steel tanks located in Bethel Valley and Melton Valley at ORNL. A significant portion of the sludge is currently in the eight stainless-steel 50,000 gallon tanks in Building 7830, the Melton Valley Storage Tanks (MVST). These tanks are located in two separate concrete vaults of four tanks each. The tanks and vaults have High Efficiency Particulate Air (HEPA) filtered ventilation systems that minimize the potential for release of radionuclides. Sludge in the other tanks will be transferred by others into the MVSTs on a schedule that supports processing in the TWPC and disposition of the processed sludge at WIPP. Building 7830 and surrounding area will be assigned to the Contractor

Interface Agreements, and other necessary activities to ensure safe and efficient processing of waste. The following table, for the purposes of clarification and coordination, defines the division of scope, and activities between the Contractor and the CCP.

Contractor Scope		CCP Scope
1. Provide oversight of CCP waste characterization and certification activities as necessary to execute signature authority for hazardous waste manifest for waste shipments to WIPP (shipper of record)	1.	Comply with the TWPC authorization basis
2. Provide oversight of CCP waste characterization and certification activities as necessary to ensure compliance with TWPC authorization basis	2.	Acceptable Knowledge (AK) compilation, revisions, reconciliations, updates, reporting, etc
3. Authorization Basis development, implementation, maintenance and oversight including DSAs, readiness activities and USQ evaluations.	3.	Non-destructive assay (NDA) screening scans for authorization basis and LLW, determination, and WIPP certification
4. Facilities to house or place the characterization equipment	4.	Non-destructive Examination (NDE) screening scans for authorization basis and LLW, determination, and WIPP certification
5. Emergency management, preparedness and response	5.	Evaluate existing waste containers for compliance to WIPP packaging criteria
6. Interpretation of screening data received from CCP for authorization basis and LLW determinations	6.	Headspace gas (HSG) sampling, analysis and data reporting
7. Waste container handling, storage and inventory controls	7.	Oversight of Contractor Visual Examination (VE) operations
8. Perform VE operations using CCP procedures with CCP oversight	8.	Data reporting of Contractor VE operations
9. Perform sampling of TRU waste using CCP procedures with CCP oversight	9.	Oversight of Contractor TRU waste sampling
10. Hoisting and rigging operations	10.	Support for audits, tours, and other information
11. Industrial safety and hygiene	11.	Analysis and data reporting of Contractor TRU waste sampling,
12. Manage the processing and disposition of all LLW and MLLW.	12.	Gas generation testing operations and data reporting
13. Fire protection	13.	Lots evaluations and data reconciliation
14. Utilities, including electrical power, phone lines, data lines, water, sewage, etc.	14.	WWIS Data Entry

Contractor Scope		CCP Scope	
15.	Provide office space for site operations	15.	Waste Certification
16.	Work control process	16.	Transportation Certification
17.	Site based training (OSHA, GET, Radworker, etc.)	17.	Shipment of TRU waste to WIPP
18.	Environmental controls, permitting and compliance	18.	Training associated with the certified characterization program
19.	Provide thermally conditioned facilities for HSG sampling	19.	Deficiency identification, tracking, and resolution associated with the certification program
20.	Waste container repackaging and removal of prohibited items	20.	Container tracking with the certified program
21.	Calibration laboratory services	21.	Configuration management of CCP provided equipment (includes health and safety plans) in accordance with Contractor Authorization Basis controls
22.	Procedural reviews and concurrence signatures	22.	Define and maintain the procurement program for purchase of goods and services within the certified program
23.	Radiological controls including surveys, postings, dosimetry, source controls and bioassay	23.	Quality assurance program activities associated with the certified program
24.	Procure goods and services in accordance with requirements of the CCP procurement program	24.	Completion and reporting of Performance Demonstration Program (PDP) testing
25.	Assist in the development of information for AK compilation, revisions, reconciliations, updates, reporting, and classification review	25.	Develop procedures used to conduct the above activities
26.	Provide PDP program support needed to assemble test drums, coordination of sources from DOE		
27.	Management of waste processing activities exclusive of certification activities		
28.	Conduct of operations		
29.	Hazardous waste manifests		
30.	Design and Engineering		
31.	Criticality Safety		
32.	Safety and health		
33.	Support for audits, tours, information requests from DOE		

	Contractor Scope	CCP Scope
	and regulatory agencies	
34.	Project management	
35.	Start-up, testing and readiness preparation and demonstration activities	
36.	Site maintenance (including maintenance of the TWPC, associated support facilities, the DOE trailer [Bldg 7880L], roads, lighting, fencing and grounds to maintain proper working condition)	
37.	Consultation support for other DOE waste generators to ensure proper waste preparation and demonstration activities	
38.	Other items as directed by the COR	

B. Build-out of Facilities and Systems Required for RH TRU Waste Operations:

The Contractor shall complete actions necessary to support the processing of RH-TRU debris and soils waste and mobilization and processing of RH-sludge for disposal at WIPP. These actions include, but are not limited to, the following activities:

1. Complete engineering evaluations, planning and installation of the RH TRU debris and soils waste processing system and demonstrate the system will function as designed to process RH TRU debris and soils waste for disposition.
2. Complete engineering evaluations, planning, construction, and procurement of capital equipment and associated installation, testing and startup of the RH TRU sludge processing system and demonstrate that the system will function as needed to process certifiable RH TRU sludge. The demonstration shall include the processing of surrogate material through the complete processing systems. The components of the TWPC Supernate System required to support sludge processing shall be restarted and shall be a part of this demonstration.
3. Complete engineering evaluations, planning, construction, and procurement of capital equipment and associated installation, testing and startup of the RH TRU sludge mobilization system and transfer piping, and demonstrate that the system will function as needed to mobilize and transfer RH TRU sludge waste from the Bldg 7830 storage tanks to the TWPC.

C. Enhancements of Facilities and Systems for CH TRU Waste Operations:

In order to meet DOE's mission needs, the Contractor shall, with prior approval of the COR, upgrade and enhance the CH TRU processing facilities and systems as necessary to improve operations safety, efficiency and throughput.

D. Waste Operations**LLW and MLLW:**

When waste processing operations result in the generation of LLW/MLLW the Contactor shall:

1. Process and treat the waste as required to meet disposal site waste acceptance criteria and RCRA LDR requirements as applicable.
2. Procure LLW/MLLW disposal site approved disposal containers for the waste.
3. Obtain final waste form certification from Nevada Test Site (NTS) or other utilized disposal sites.
4. Coordinate with the disposal sites and function as Shipper of Record for all waste being shipped to disposal sites.
5. Prepare the MLLW for transport to Bechtel Jacobs Company (BJC) for interim storage as required if treatment capability is not available at the TWPC.
6. Prepare the waste for transport to the disposal facility.
7. Load and transport LLW/MLLW for disposal.

CH TRU Waste:

The Contractor shall:

1. Receive, treat, and coordinate processing for disposal at WIPP, CH TRU waste currently in storage on the DOE Oak Ridge Reservation, future waste generated at the Oak Ridge Reservation, and CH TRU

waste from other DOE sites as designated by DOE. This scope includes repackaging, treatment, and any other actions necessary to prepare the waste for compliant disposal.

2. Support CCP in the characterization and certification of the CH TRU waste for disposal at the WIPP.
3. Procure and use WIPP approved disposal containers.
4. Coordinate with DOE contractors regarding deliveries of CH waste including sequencing of specific containers.
5. Prepare the waste for return to DOE for interim storage as required.
6. Coordinate with the CCP, as necessary, for shipment of waste to WIPP.
7. Assist with TRUPACT II loading for shipment to WIPP if necessary.

RH TRU Debris and Soils Waste:

The Contractor shall:

1. Receive, treat and coordinate processing of RH TRU debris and soils waste for disposal at WIPP. This scope includes repackaging, treatment, and any other actions necessary to prepare the waste for compliant disposal.
2. Integrate with CCP in the characterization and certification of the RH TRU debris and soils waste for disposal at the WIPP.
3. Procure and use WIPP approved disposal containers.
4. Provide steel overpacks and spacers for RH TRU waste concrete casks when requested by DOE.
5. Coordinate with other DOE contractors regarding deliveries to the TWPC of RH debris and soils waste including sequencing of specific containers.
6. Prepare the waste for return to DOE for interim storage if necessary.
7. Coordinate with the CCP, as necessary, for shipment of waste to WIPP.
8. Assist in loading of processed RH TRU waste into transport vehicle for shipment to WIPP.

RH TRU Sludge:

The Contractor shall

1. Procure and install a sludge mobilization and transfer system including transfer lines between the MVST and the TWPC.
2. Measure the starting volume of waste sludge in each of the eight tanks. Measurements may be required multiple times in each tank.
3. Utilizing supernate and/or water, mix sludge in the MVSTs and transfer to the TWPC.
4. Procure and use WIPP approved disposal containers.
5. Process sludge and transfer into appropriate containers for disposal. This scope includes conducting analysis as required, processing, treatment, and any other actions necessary to prepare the waste for compliant disposal.
6. Support CCP in the characterization and certification of the RH TRU waste for disposal at the WIPP.
7. Coordinate with the CCP, as necessary, for shipment of waste to WIPP.
8. Assist CCP in loading of processed RH TRU waste into transport vehicle for shipment to WIPP.
9. Retrieve and process for disposal at least 95% of the sludge from each of the eight tanks.
10. Accept and assist in supernate and sludge transfers from DOE contractor into empty Bldg. 7830 tanks.
11. The Contractor will be responsible for maintenance (including preventative maintenance) and upkeep of the buildings at the MVST included in the lease area.

C. RH TRU Waste:

1. Deliver RH TRU debris and soils waste to the TWPC.
2. Assisting interface between the Contractor, CCP, WIPP, NTS, and other Contractors performing work supporting the TRU project and waste generators.
3. Bear the cost of transportation and disposal of wastes at WIPP.
4. Pick up and return to interim storage non-compliant/prohibited item waste from TWPC back as agreed to on a case-by-case basis.
5. Provide for maintenance and management of the MVST and Building 7877 until they are assigned to Contractor.
6. Coordinate with Contractor regarding deliveries and pick up of RH debris and soils waste including sequencing of specific containers.
7. Provide WIPP shipping casks.
8. Coordinate with TWPC for transfer of sludge from other tanks into the MVSTs.

V. TECHNICAL REQUIREMENTS

A. Level of Effort

DOE expects for the following processing level of effort to be met:

- Drum shipping and handling operations will be increased to maximize throughput of waste containers through the facility at a minimum rate of 40 waste drum equivalents per week as directed by the COR.
- Provide efficient review of screening data to identify Low-Level Waste to be shipped for disposal. Manage the disposition of all LLW and MLLW identified through this process.
- Provide efficient CH TRU repackaging operations.
- Preparation, build out, and readiness of systems for processing RH debris and soils waste will be completed by October 1, 2007 or as otherwise directed by the COR.
- Preparation and build out of systems for processing RH sludge will be completed in order to begin processing by the end of the second quarter of Fiscal Year 2009 (FY09).

Continuous processing of waste through the facility shall be accomplished in a safe and efficient manner.

B. Certification of TRU Waste:

CCP will be responsible for certification of TRU waste for disposal at WIPP as previously described.

C. Transportation of TRU Waste:

CCP will be responsible for certification and physical transport of TRU waste to WIPP in accordance with WIPP certification requirements. The contractor will sign the hazardous waste manifest as the shipper of record. Transport may be initiated from storage facilities located at the TRU Waste Processing Center or from other locations. WIPP will provide review and approval of the Certification and Transportation Data Packages.

D. Environment, Safety, and Health

E. STORAGE

The Contractor shall be responsible for the safe storage of all delivered wastes, both pre- and post-treatment, until transported off-site either to a disposal site or back to DOE for interim storage.

F. TREATMENT SERVICES/PRODUCT WASTE FORM

The waste shall be processed to meet the WIPP WAC, the NTS WAC or other selected disposal site waste acceptance criteria. All services shall be completed safely and in accordance with all applicable federal, state, and local regulations, laws and permits. The Contractor shall not intentionally mix the waste to achieve what might be construed as dilution or as an attempt to change the waste classification.

The Contractor shall establish management controls for verification of incoming and outgoing volume at the treatment facility. DOE will independently verify all incoming and outgoing waste volumes.

G. PACKAGING AND TRANSPORTATION

Packaging and transportation shall meet all Federal and state regulatory requirements. The Contractor will be the shipper of record for TRU waste.

IV. DOE RESPONSIBILITIES:**A. General**

1. Perform Environment, Safety and Health oversight as described in the ISMS.
2. Provide electrical power and water at no cost to the Contractor
3. Provide emergency preparedness and emergency response through ORNL
4. Provide matrix sources for NDA annual PDP and weekly matrix checks until Contractor implements an acceptable criticality safety program.
5. Provide site security.

B. CH TRU Waste:

1. Deliver the CH TRU debris and soils waste to the TWPC.
2. Assist with the interface between the Contractor, CCP, WIPP, NTS, and other Contractors performing work supporting the TRU project and waste generators.
3. Coordinate with Contractor regarding deliveries and pick up of CH debris and soils waste including sequencing of specific containers.
4. Pick up and return to interim storage TWPC processed and WIPP-ready CH TRU waste.
5. Pick up and return to interim storage non-compliant/prohibited item waste from TWPC as agreed to on a case-by-case basis.
6. Support CCP in loading WIPP-ready CH TRU waste into TRUPACTs or other WIPP qualified shipping containers and transport to WIPP when required
7. Deliver WIPP-ready drums from DOE storage for loading for shipment to WIPP as necessary.
8. Provide WIPP shipping casks.
9. Bear the cost of transportation and disposal of wastes at WIPP.

Under the Atomic Energy Act, DOE is the responsible agency with regulatory authority for radioactive/nuclear materials and for on-site worker safety and health. The DOE will authorize the responsibility for environment, health and safety to the Contractor through the review and approval of the Contractor's Integrated Safety Management System (ISMS).

The Contractor shall maintain compliant and safe operations, integrate safety and health into all activities, identify hazards, manage risks through implementation of this ISMS and shall perform self-evaluations of its ISMS in accordance with the terms of this contract.

The ISMS authorization process objectives are (1) to allow the Contractor to accomplish work for DOE in a safe and compliant manner and (2) to allow the DOE to satisfy its safety and health responsibilities under the Atomic Energy Act.

DOE will perform oversight of operations by conducting periodic reviews of the Contractor's operations. The DOE may also accompany state or federal officials during permit inspections of the Contractor's operations.

E. Defense Nuclear Facilities Safety Board

Direct interface with the Defense Nuclear Facilities Safety Board (DNFSB) will be the responsibility of DOE. The Contractor shall cooperate with DOE to allow inspection of the facility by DNFSB. If DNFSB should have findings related to the safety of the facility or operation, DOE will determine whether the findings identify nonconformance with the ISMS Plan. Findings that demonstrate noncompliance with the DOE approved ISMS plan shall be corrected by the Contractor in a timely manner.

VI. DELIVERABLES

See Section J.

Appendix A – Acronyms

AK – Acceptable Knowledge
BJC – Bechtel Jacobs Company
CCP – Central Characterization Project
CH – Contact Handled
COR – Contracting Officer Representative
DNFSB – Defense Nuclear Facilities Safety Board
DOE – Department of Energy
DSA – Documented Safety Analysis
GET – General Employee Training
HEPA – High Efficiency Particulate Filter
HSG – Headspace gas
ISMS – Integrated Safety Management System
LLW – Low level waste
MLLW – Mixed low level waste
mR/h – millirad per hour
MVST – Melton Valley Storage Tanks
NDA – Non-destructive assay
NDE – Non-destructive examination
NTS – Nevada Test Site
ORNL – Oak Ridge National Laboratory
OSHA – Occupational, Safety and Health Act
P&VV – Pump and Valve Vault
PDP – Performance Demonstration Program
RCRA – Resource Conservation and Recovery Act
RH – Remote Handled
RTR – Real time radiography
SWSA – Solid Waste Storage Area
TRU – Transuranic
TWPC – TRU Waste Processing Center
USQ – Unreviewed Safety Question
VE – Visual examination
WAC – Waste Acceptance Criteria
WIPP – Waste Isolation Pilot Plant
WWIS – WIPP Waste Information System

SECTION D - PACKAGING AND MARKING**D-1. ORO D01 Packaging (MAY 1997) (Revised)**

(a) Preservation, packaging, and packing for shipment or mailing of all work other than radioactive work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s).

(b) Reports deliverable under this contract shall be mailed by other than first-class mail, unless the urgency of the deliverable sufficiently justifies the use of first-class mail. The Contractor shall not utilize certified or registered mail or private parcel delivery service for the distribution of reports under this contract without the advance approval of the Contracting Officer.

D-2. ORO D05 Marking (APR 1984)

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

(1) Identifies the contract by number under which the item is being delivered.

(2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).

(3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

(b) For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required in a. above shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

SECTION E - INSPECTION AND ACCEPTANCE**E-1. 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. ORO E01 Inspection (MAR 1989)

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative.

E-3. ORO E05 Acceptance (APR 1984)

Acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer or his designated representative.

SECTION F - DELIVERIES OR PERFORMANCE**F-1. Transition Period (AUG 2006)**

The contract transition period is 60 calendar days after the execution of the Final Conversion Modification, or as otherwise directed by the Contracting Officer.

F-2. 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-3. ORO F05 Principal Place of Performance (APR 1984)

The contract will be principally performed at the TRU Waste Processing Facility (TWPF) in Oak Ridge, Tennessee.

F-4. ORO F03 Term of Contract Alternate I (MAY 1997)

The term of this contract is for two year(s). However, at the Government's sole discretion, this contract may be extended for one one-year option pursuant to the clauses entitled "Option(s) to Extend the Contract (CPFF).

SECTION G - CONTRACT ADMINISTRATION DATA

G-1. ORO G01 Correspondence Procedures (OCT 2004)

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

- (a) **Technical Correspondence.** Technical correspondence concerning performance of this contract shall be addressed to the DOE Contracting Officer's Representative (COR), with an information copy of the correspondence to the DOE Contract Specialist.
- (b) **Patents/Technical Data/ Intellectual Property Correspondence.** Correspondence concerning patent and technical data issues shall be addressed to the Assistant Chief Counsel for Intellectual Property, Office of Chief Counsel, USDOE, Post Office Box 2001, Oak Ridge, TN, 37831-8751, with an informational copy to the Contracting Officer and the COR.
- (c) **Non-technical Administrative Correspondence.** All correspondence, other than technical correspondence, shall be addressed to the Contracting Officer or Contract Specialist designated in ORO G25, with information copies of the correspondence to the DOE COR.
- (d) **Subject Line(s).** All correspondence shall contain a subject line commencing with the contract number, as illustrated below:

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

G-2. ORO G10 Submission Of Vouchers/Invoices (OCT 2004) (Revised)

(a) The Contractor shall submit invoices in accordance with the FAR payment clause in Section I of the contract (unless prior written consent from the Contracting Officer for more frequent billing is obtained). The period of performance covered by the invoices should be the same as covered by any required monthly cost management reports. Invoices will be submitted twice monthly for the first six months; thereafter, monthly invoices will be submitted.

(b) The invoice (Standard Form 1034 located at <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/ProcurementForms?OpenDocument>) should include a statement of cost for services rendered. This statement should include, as a minimum, a breakout by cost or price element and task order (if applicable) of all services actually provided by the Contractor, both for the current billing period and cumulatively for the entire contract. The statement of cost must include a certification statement signed by a responsible official of the Contractor. The Contractor is required to submit payment invoices and supporting documentation electronically through the Vendor Inquiry Payment Electronic Reporting System (VIPERS) which is accessible at <http://finweb.oro.doe.gov/vipers.htm>.

The website provides the vendor the following system capability, required Electronic Funds Transfer (EFT) banking form/information, and instructions:

- Logon to Vipers
- Request Access

- Vendor Banking Data Form
- Registration
- Invoice Status
- Electronic Invoicing

G-3. ORO G20 Contracting Officer's Representative (COR) (MAR 1989)

The Contracting Officer's Representative will be designated by separate letter and will represent the Contracting Officer in the technical phases of the work. The COR is not authorized to change any of the terms and conditions of this contract. Changes in the Scope of Work will be made only by the Contracting Officer by properly written modification(s) to the contract by the Contracting Officer Additional Contracting Officer's Representative(s) for other purposes as required may be designated in writing.

G-4. ORO G25 Contract Administration (MAR 1989)

The contract will be administered by:

U.S. Department of Energy
Oak Ridge Operations Office
Procurement and Contracts Division
ATTN: Connie Bayless, AD-423
P.O. Box 2001
Oak Ridge, Tennessee 37831-8758

Written communication shall make reference to the contract number and shall be mailed to the Contract Specialist identified above.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H-1 Definitions (AUG 2006)

- a) Facilities – the TRU Waste Processing Center including fixtures and other appurtenant equipment used in the treatment process.
- b) Intellectual Property –inventions, discoveries regardless of when conceived or actually reduced to practice, which are controlled or owned by the contractor at any time through the performance of the contract and incorporated or embodied in the construction of the Facility or which are utilized in the operation of the Facility.
- c) Technical Data – all technical data (as defined in Rights in data- Facilities), including proprietary data and data obtained from subcontractors, licensors, and licensees, necessary to operate the Facilities, as well as designs, operation manuals, flowcharts, software, etc., and other information necessary for performance of the work or operation of the Facilities to treat the waste in conformance with the purpose of the contract.
- d) Equipment – equipment, material, construction work in progress, spare parts and supplies acquired by the contractor and/or subcontractors necessary for or incident to performance of the Statement of Work or operation and maintenance of the Facilities.
- e) Final Conversion Modification – the contract modification that converted the fixed price privatization contract to a cost reimbursement contract.

H-2 ORO H01 Technical Direction (Alternate 1) (OCT 1993)

- (a) Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - (1) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - (2) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
 - (3) Directions to the Contractor which suspend work when clear and present danger exists to workers or members of the public. Clear and present danger is a condition or hazard which could be expected to cause death or serious harm to workers, members of the public, or the environment, immediately or before such condition or hazard can be eliminated through normal procedures. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes";
 - (3) In any manner causes an increase or decrease in the price, or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within his authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in B.1. through 5. above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract;
 - (2) Advise the Contractor in writing within 30 days after receipt of the Contractor's letter not to perform under the technical direction and cancel the direction; or
 - (3) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes--Alternate I."

H-3 ORO H65 Confidentiality of Information (AUG 1992)

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
- (1) Information which, at the time of receipt by the Contractor, is in public domain;

- (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
 - (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.
 - (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
 - (e) This clause shall flow down to all appropriate subcontracts.

H-4 ORO H95 Government-Furnished Property and Data (Alternate 1) (JUL 1990)

Only that property and data specifically included in the LIST OF GOVERNMENT PROPERTY - FURNISHED, Part III--Section J to the contract, shall be furnished.

H-5 ORO H145 Consecutive Numbering (MAY 1985)

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

H-6 ORO H150 Representations, Certifications and Other Statements of the Offeror (MAR 1994)

The Representations, Certifications, and Other Statements of the Offeror submitted as part of the offer for this contract are, by reference, hereby incorporated in and made a part of this contract.

H-7 Insurance (SEP 1996)

With regard to the clause FAR 52.228-7 Insurance - Liability to Third Persons, contained in Section I of this contract, the following kinds and minimum amounts of insurance are required:

- (1) Workers' compensation and employer's liability. The Contractor shall comply with applicable Federal and State workers' compensation and occupational disease statutes. If

occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

- (2) General liability. Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.
- (3) Automobile liability. Automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

H-8 Pre-Existing Conditions

- (a) DOE agrees to reimburse, 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 site or facility condition, act or failure to act which occurred prior to the Contractor assuming responsibility for the site, facility, or activity in 1998. 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 the Contractor's assumption of responsibility, the Contractor shall be responsible in accordance with the terms and conditions of this contract.
- (b) The Contractor shall inspect the facilities and sites and identify to the Contracting Officer, in a timely manner, those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suite, cost, expense, or disbursement, or areas of actual or potential noncompliance with the terms and conditions of the contract or applicable law or regulation.
- (c) The obligations of the Government under this clause are subject only to the availability of appropriated funds.

H-9 Notice of Litigation or Administrative Claims

The Contractor and the Government each shall promptly notify the other in the event any suit or action is filed or any claim is made against either, including any proceeding brought by an administrative agency (hereafter "claim"), which involves the performance of this contract. The Government shall also notify the Contractor of any claim made against the site M&O contractor(s) related to the Contractor's performance obligation under this contract. Upon request, the Contractor and the Government shall to the extent allowed by law, furnish copies of the claim,

and shall authorize its representatives to collaborate with counsel for the other in settling or defending the claim.

The Contractor and the Government each shall promptly notify the other when it initiates litigation against third parties, including proceedings before administrative agencies, in connection with this contract. Upon request, the Contractor and the Government each shall furnish to the extent allowed by law, the other copies of the litigation, and shall authorize its representatives to collaborate with counsel for the other in pursuing the claim.

H-10 Contract Assignment (AUG 2006)

Both parties recognize that the Government may assign this contract to another Government prime contractor to be administered as a subcontract. The contractor may not assign or novate the contract without prior approval of DOE.

H-11 Disposition of Intellectual Property - Failure to Complete Contract Performance

The following provisions shall apply in the event the Contractor does not complete contract performance for any reason:

- (a) Regarding technical data and other intellectual property, DOE may take possession of all technical data, including proprietary data and data obtained from subcontractors, licensors, and licensees, necessary to operate the treatment facility ("facility"), subject to the Rights in Data clause of this contract, as well as the designs, operation manuals, flowcharts, software, etc., completed manuals, flowcharts, completed facilities, equipment and other property and information necessary for performance of the work or operation of the facility to treat the waste in conformance with the purpose of this contract. Proprietary data will be protected in accordance with the limited rights data provisions of the Rights in Data Clause.
- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor, and any other intellectual property, which are owned or controlled 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 covers articles, materials, or products manufactured at the facility, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and any licenses in any third party intellectual property for operations and closure of the facility to DOE or such other third party as DOE may designate.

H-12 ORO H25 Small Business Subcontracting Plan (SEPT 1999)

The Small Business Subcontracting Plan submitted by the Contractor for this contract, and approved by the Contracting Officer on April 28, 2006 is, by reference, hereby incorporated in and made a material part of this contract. Any required revisions to the Plan shall be accomplished by contract modification.

H-13 Title of Facilities and Ownership of Intellectual Property, Technical Data, and Equipment (AUG 2006)

As part of consideration for the conversion of this contract from a privatization fixed price contract to a cost reimbursement fixed fee contract retroactive to May 15, 2006, the Contractor agrees to transfer clear title to the Transuranic Waste Processing Center (Facilities) and Equipment and to transfer title or appropriate rights to all Intellectual Property and transfer custody of Technical Data associated with and necessary to operate and maintain the Facilities to the Department of Energy (DOE) at no additional cost to the government.

The Contractor shall provide to DOE a final description and inventory of all TRU Waste Facilities, Equipment, Technical Data, and Intellectual Property incorporated, specifically used, produced or acquired under the FWENC TRU Waste Contract and its subcontracts that is required to be submitted to DOE no later than 35 calendar days after the Final Conversion Modification is executed. DOE will review the Contractor's final description and inventory list in good faith and make every reasonable effort to complete its review within 10 business days after submission or resubmission, if necessary. The Contracting Officer shall extend the time periods identified herein day for day to the extent DOE's decision to approve or disapprove each such submission or resubmission exceeds 10 calendar days. The Contracting Officer shall make every reasonable effort to identify specifically to the Contractor any deficiencies in the Contractor's submission or re-submissions of the final description and inventory. Provided the Contractor is making diligent efforts to provide a compliant final description and inventory, the Contracting Officer shall grant reasonable extensions to the time periods identified herein as needed to complete correction of deficiencies in such submissions or resubmissions

Upon receiving DOE approval of the final description and inventory the Contractor will execute the agreement(s) effectuating this transfer of title, ownership, use and custody no later than 60 calendar days after the execution of the Final Conversion Modification or as otherwise extended by the Contracting Officer. The Contracting Officer shall make every reasonable effort to identify specifically to the Contractor any deficiencies in title transfer documentation. Provided the Contractor is making diligent efforts to provide acceptable title transfer documentation, the Contracting Officer shall grant reasonable extensions to the time periods identified herein as needed to complete correction of deficiencies in such documentation. The effective date of said transfers shall be no later than 60 calendar days after execution of the Final Conversion Modification unless extended by the Contracting Officer.

H-14 Application of Labor Policies and Practices

The Contractor shall be a party to the current site wide Construction Labor Agreement in which all parties involved in execution of construction work on the Oak Ridge Reservation are signatory. The Contractor also agrees to conduct its labor relations program in accordance with DOE's intent that labor policies and practices reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations

essential to the successful accomplishment of the contract.

H-15 ORO H05 Modification Authority (APR 1984)

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

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

H-16 ORO H70 Key Personnel (MAR 1996)

The personnel specified below are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. The Contracting Officer is to be notified reasonably in advance of diverting of, or substitution for, any of these individuals. That period of time shall not be less than thirty (30) days. No diversion shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

NAME

TITLE

██████████	General Manager
██████████	Deputy General Manager
██████████	Director of Waste Management Programs

H.17 ORO H35 Environment, Health, and Safety Plan (Government-Owned Or Leased Facilities Alternate I (JAN 2006)

(a) In performance of the work, the contractor shall comply with all applicable federal and state environmental, health, and safety regulations and shall take all reasonable precautions to protect the environment, health, and safety of its employees, DOE personnel, and members of the public and shall comply with all applicable safety and health regulations and requirements set forth in 29 CFR Part 1910, Occupational Safety and Health Standards for General Industry, and 29 CFR Part 1926, Occupational Safety and Health Standards for Construction Industry. In addition, workers shall wear eye and head protection that complies with American National Standards Institute (ANSI) Z87.1, Z89.1, and Z89.2 at all times while in designated construction or operational areas. The contractor shall participate in emergency response drills and exercises as specified by the Government..

(b) The contractor shall take all necessary and reasonable steps to minimize the impact of its work on DOE functions and employees, and immediately report all job-related injuries and/or illnesses which occur in any DOE facility to the Contracting Officer Representative (COR). Upon request, the contractor shall provide a copy of occupational safety and health self-assessments and/or inspections of work sites for job hazards for its DOE facilities to the COR. The Contractor shall maintain records required per 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses, submitting injury/illness and man-hour reports as directed by DOE Order 231.1A (available at <<http://www.directives.doe.gov/>>).

(c) The Contracting Officer may notify the contractor, in writing, of any noncompliance with the terms of this clause, plus the corrective action to be taken. After receipt of such notice, the contractor shall immediately take such corrective action.

(d) In the event that the contractor fails to comply with the terms and conditions of this clause, the Contracting Officer may, without prejudice to any other legal or contractual rights, issue a stop work order halting all or any part of the work. Thereafter, a start order for resumption of the work may be issued at the discretion of the Contracting Officer. The contractor shall not be entitled to an equitable adjustment of the contract amount or extension of the performance schedule on any stop work order issued under this special contract requirement.

H-18 Integration of Environment, Safety and Health into Work Planning and Execution. (JAN 1997)

(a) For the purpose of this clause,

(1) safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) employees include subcontractor employees.

(b) In performing work under this contract, the contractor shall perform work safely, ~~in a manner~~ that ensures adequate protection for employees, the public, and the environment, ~~and shall be~~ accountable for the safe performance of work. The contractor shall exercise a degree ~~of care~~ commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. For the purposes of this clause, line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

- (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences. ES&H requirements appropriate for hazards identified for work to be conducted under this contract are set forth in the Statement of Work.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for work task/activities to be initiated and conducted will be established and agreed-upon by DOE and the contractor through the Integrated Safety Management System (ISMS) Plan. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The proposed SMS documentation delineating operating ES&H parameters shall be forwarded by the Contractor to the Contracting Officer and shall upon his approval constitute an Authorization Agreement.
- (c) The contractor shall manage and perform work in accordance with a documented ISMS Plan that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the ISMS shall describe how the contractor will:
- (1) define the scope of work task/activities;
 - (2) identify and analyze hazards associated with the work/activities;
 - (3) develop and implement hazard controls;
 - (4) perform work within controls; and
 - (5) provide feedback on adequacy of controls and continue to improve safety management.
- (d) The ISMS shall describe how the contractor will establish, document, and implement safety performance objectives and commitments while maintaining the integrity of the System. The ISMS shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives pursuant to the clause of this contract on Laws, Regulations, and DOE Directives. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (f) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the ISMS. If the contractor fails to provide resolution or if, at any time, the

contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any such stop work order shall not be pursuant to FAR 52.242-15 in Section I of this contract. Further, any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (I) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or equitable adjustment by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(g) The contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

- "The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may require that the subcontractor submit an ISMS Plan for the contractor's review and approval."

H-19 Laws, Regulations, and DOE Directives. (JAN 1997)

- (a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. Omission of any applicable law or regulations from this contract does not affect the obligation of the Contractor to comply with such law or regulation.
- (b) Environmental, safety and health (ES&H) requirements appropriate for hazards identified for work conducted under this contract have been determined by DOE and the Contractor and are set forth in the Statement of Work. In the event that a new hazard(s) is identified during contract performance, DOE and Contractor shall utilize "The Department of Energy Closure Process for Necessary and Sufficient Sets of Standards" set forth in DOE M 450.3-1 to agree upon any necessary changes to the ES&H requirements set forth in the Statement of Work; provided, however, that notwithstanding any language of this clause or elsewhere in the contract, the Contracting Officer shall have the right to modify the contract at any time pursuant to the "CHANGES" clause of this contract.
- (c) The Contractor is responsible for compliance with the requirements made applicable to the contract, regardless of the performer of the work. The Contractor also is responsible for flowing down the necessary provisions in subcontracts at any tier to which the contractor determines such requirements apply.

H-20 Apportionment of Liability

This clause only applies for the work completed that took place prior to May 15, 2006.

- (a) The Contractor shall defend, indemnify, reimburse, and hold harmless the Government, UT Battelle, LLC (UT-B), its parent, affiliated and subsidiary companies, including the employees, agents, representatives, successors, officers, and assigns, and directors of each of them from the following claims, demands, causes of actions, liabilities, losses, damages, fines, penalties, administrative and judicial orders, and costs, including litigation costs, counsel fees, judgments and settlements (hereafter "liabilities"):
- (1) Liabilities which the Contractor and/or an indemnitor have assumed in accordance with the terms of this contract;
 - (2) Liabilities for which the Contractor has failed to obtain or maintain required insurance in accordance with clause H-7 of this contract;
 - (3) Liabilities resulting from the denial of full or partial coverage or compensation by an insurer on a claim for damage or loss;
 - (4) Liabilities caused by errors, omissions, or negligence related to the delivery of professional services by or to the Contractor (i.e., directors and officers liability and professional errors and omissions liability);
 - (5) Liabilities arising from the Contractor's failure to comply with any: (1) Federal, State, or local law, ordinance, regulation, rule, order; (2) statutory, common law, or regulatory requirement; (3) applicable permit; (4) DOE Order (including any documents pertaining to implementation of such order); (5) obligation DOE may incur as a result of signing hazardous waste, or other permit applications or submittals for the facilities or materials which are the subject of this contract; or (6) requirement (including schedule requirement) pertaining to the transuranic waste imposed on the DOE pursuant to the Site Treatment Plan for Mixed Wastes on the U.S. Department of Energy Oak Ridge Reservation, any applicable permits, or the Federal Facilities Compliance Act Order issued September 26, 1995, by the Tennessee Department of Environment and Conservation. This provision shall also apply to such failures by Contractor's subcontractors and suppliers.
 - (6) Liabilities arising from Contractor's actual or asserted failure to comply with any of the provisions of this Contract;
 - (7) Liabilities arising from personal injury including death, or property damage, to the extent that such personal injury or property damage is caused by the negligence of Contractor, its subcontractors or suppliers; and
 - (8) Liabilities relating to actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly from the negligence of Contractor, its subcontractors or suppliers.

(b) Except to the extent covered by insurance, paragraph a. does not apply to liabilities to the extent they result from:

- (1) Uncontrollable circumstances. An uncontrollable circumstance is an act, event, or condition listed in this paragraph (2) which has a material effect on the ability of the Contractor to perform its obligations under this contract, but only if such act, event or condition and its effect (i) is beyond the control of the Contractor and its subcontractors; (ii) is not caused by the fault or negligence of the Contractor and its subcontractors; and (iii) could not have been reasonably avoided by the Contractor or its subcontractors.

The following events and conditions and no others, shall constitute an uncontrollable circumstance if they meet the conditions of the preceding sentence:

- A. Acts of God, including blizzard, earthquake, explosion, fire, flood, hurricane, lightning, or tornado, but not including reasonably anticipated weather conditions for the geographic area;
- B. Act of the public enemy, war, embargo, insurrection, riot, or civil disturbance;
- C. Failure of DOE to provide and maintain those utilities and services (if any) to the service area, facility or site (if any), which DOE has specifically agreed to provide under other provisions of this Contract, and which are required for and essential to the performance of the contract, excluding temporary interruptions;
- D. Denial, failure to issue or renew, or termination, by a regulatory agency, of any environmental permit or other authorization essential to the delivery of the products or services to be delivered under this Contract, if such denial, failure to issue or renew, or termination shall not be the result of the willful or negligent action or inaction of the Contractor, or the failure of the Contractor to exercise prudent business judgment, and if the Contractor has taken all reasonable actions in good faith to mitigate or contest such denial, failure to issue or renew, or termination; and E. Judicial action by a third party which contests the DOE National Environmental Policy Act (NEPA) actions and results in a judicial order enjoining performance of the Contractor's work.

(2) A negligent act or failure to act of DOE or UT-B.

- (c) Nothing in this clause is intended to impose upon the Contractor any liability for which it is indemnified under the Price-Anderson Act, as amended.
- (d) Notwithstanding the foregoing a. through c., the Contractor shall defend, indemnify, reimburse and hold harmless the Government and UT-B, its parent, affiliated and subsidiary companies, including the employees, agents, representatives, successors, officers, assigns, and directors of each of them, from any and all liabilities associated with or resulting from secondary waste.
- (e) In all cases where UT-B is referenced, the provisions shall apply to UT-B and to any Contractor selected by DOE to manage the Oak Ridge National Laboratory after the current M&O contract with UT-B ends."

H.21 ORO H155 Contractor Employee Checkout (MAR 2004)

The Contractor must notify the Contracting Officer and the DOE Information Resources Management Division when an employee terminates employment with the company. This notification is required to ensure that all government-issued equipment and property assigned to the departing employee has been recovered and that access to facilities and computer networks has been terminated. Government-issued equipment and property includes, but is not limited to, keys, office equipment, computer equipment (hardware and software), manuals and books, telecommunications equipment, corporate credit cards, calling cards, badges, uniforms, tools, and safety gear. A notification must be completed for each employee terminating.

H.22 ORO H195 Access to DOE-Owned or Leased Facilities (OCT 2005)

(a) The performance of this contract requires that employees of the Contractor have physical access to DOE-owned or leased facilities; however, this clause does not control requirements for an employee's obtaining a security clearance. The Contractor understands and agrees that DOE has a prescribed process with which the Contractor and its employees must comply in order to receive a security badge that allows such physical access. The Contractor further understands that it must propose employees whose background offers the best prospect of obtaining a security badge approval for access, considering the following criteria, which are not all inclusive and may vary depending on access requirements:

- (1) is the employee, or is the employee suspected of being, a terrorist?
- (2) is the employee the subject of an outstanding warrant?
- (3) has the employee deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form?
- (4) has the employee presented false or forged identity source documents?
- (5) has the employee been barred from Federal employment?
- (6) is the employee currently awaiting a hearing or trial or has the employee been convicted of a crime punishable by imprisonment of six (6) months or longer?
- (7) is the employee awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer?

(b) The Contractor shall assure:

1. In initiating the process for gaining physical access, (i) compliance with procedures established by DOE in providing its employee(s) with any forms directed by DOE, (ii) that the employee properly completes any forms, and (iii) that the employee(s) submits the forms to the person designated by the Contracting Officer.

2. In completing the process for gaining physical access, that its employee (i) cooperates with DOE officials responsible for granting access to DOE -owned or leased facilities and (ii) provides additional information, requested by those DOE officials.
- (c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee's application for a security badge is or will be denied, the Contractor shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any contractor claim against DOE.
 - (d) The Contractor shall return to the Contracting Officer or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE - owned or leased facilities by the Contractor's employee(s), upon (1) the termination of this Contract; (2) the expiration of this Contract; (3) the termination of employment on this Contract by an individual employee; or (4) demand by DOE for return of the badge.
 - (e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE -owned or leased facilities.

H.23 ORO H185 Electronic Subcontracting Reporting System (OCT 2005)

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

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

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

H.24 ORO H165 Lobbying Restriction (Energy and Water Act 2005)

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, as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.25 ORO H178 Standards Of Conduct (APR 2005)

The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, appearance, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. All persons employed in the performance of this contract shall comply with the regulations and procedures pertaining to access and use of Government buildings, grounds, vehicles, equipment, and other property. Unofficial work or work unrelated to the contract cannot be performed at Government facilities.

H.26 ORO H06 Security Qualifications (JAN 2006)

- (a) The Contractor may be required to perform work in designated security areas or work with documents or information which may require an access authorization (clearance). Additionally, the scope of their work may require enrollment into the Human Reliability Program (HRP). The Contractor shall ensure that all personnel assigned under this contract and working with classified material possess a DOE "Q" or "L" access authorization (clearance) matching the classification level of the data and information the employee will be required to work on in the performance of their assigned tasks.
- (b) In the case of those individuals that do not require a "Q" or "L" they will possess, if required, as a minimum a Limited Site Specific Only (LSSO) badge and meet all access authorization requirements per HSPD-12, DOE N 206.3, and local procedures. For employees requiring DOE "Q" or "L" security clearances and/or LSSO badge, the Contractor shall not employ anyone who is not a citizen of the United States. (Clearance-Access authorizations are granted by the DOE pursuant to 10 CFR Part 710.) Security Badges must be worn properly at all times while working at any of the DOE and NNSA facilities.
- (c) Clearances will be provided and paid for by DOE. The request for clearance and renewal of clearances must be justified based on actual job performance requirements. The Contracting Officer (CO), in coordination with the appropriate federal security representative, may waive the clearance requirement for personnel not involved with classified information while the appropriate access authorizations or badges are being processed, or for personnel associated with the program for short periods of time, such as consultants. In these cases, security requirements regarding these circumstances will be followed. The Contractor, on a case-by-case basis, will provide its own cleared escorts as needed. The Contracting Officer's Representative or Contract Technical Monitor (COR/CTM) will approve contractor personnel for escort privileges and provide escort training.
- (d) The Contractor shall be required to conduct pre-employment investigative screening of prospective employees in order to ensure trustworthiness and reliability for all individuals who do not possess a DOE "Q" access authorization. For these individuals, the Contractor shall provide certification to the COR that an investigative screening has been completed prior to employment. The certification shall include, as a minimum, verification of personal identity, previous employment and education, and the results of a credit and law enforcement check.

- (e) Requests for access authorization shall not be submitted until the contract has been awarded, and a favorable Foreign Ownership, Control, or Influence (FOCI) determination must be rendered by DOE before an access authorization will be granted, reinstated, continued, extended, or transferred for the contractor's applicant employment. Upon contract award, the Contractor is encouraged to use the DOE Accelerated Access Authorization Program (AAAP) to obtain an Interim "Q" access authorization. The request for AAAP shall include the certified results of the pre-employment investigative screening of the prospective employee and a local federal review prior to approved submission under AAAP.
- (f) The Contractor shall turn in badges for employees: (1) who are no longer working on the contract; (2) who no longer require access; (3) when their badge expires; or (4) when the contract expires or is terminated. Badges shall be returned to the individual handling security terminations. Notification of employment terminations supporting this contract will be made in writing to the CO and COR/CTM.
- (g) In addition to the possible requirement of holding an access authorization, individuals, if the work position is identified as requiring enrollment in the Human Reliability Program (HRP) and/or maintaining currency under certain program requirements (e.g., annual HRP training) must be willing to comply with all regulatory requirements to be granted access under the HRP federal rules and local procedures.

H-27 ORO H60 Observance Of Legal Holidays (SEPT 1999) (Revised)

- (a) Government personnel observe the listed days as holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and other days prescribed by Executive Orders. The Contractor observes seven holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following day, and Christmas Day
- (b) The Contractor agrees to continue to provide sufficient personnel to perform critical tasks already in operation or scheduled on holidays and shall be guided by the instructions issued by the Contracting Officer.

H-28 Advanced Understanding of Human Resource Cost (AUG 2006)

Executive pay and compensation to be reimbursed by DOE is subject to maximum amount allowable pursuant to DOE Acquisition Letter 2000-12. Prior DOE review and approval is required for executive pay and compensation for new executives after September 1 recognizing that current staff is subject to DCAA audit. Changes to employee pay and benefits after September 1 2006, are subject to prior DOE review. Overtime premium pay is applicable to non-exempt employees only.

H-29 ORO H160 DOE Specific Definitions (reference 952.202-1 dated APR 2002)

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

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

(c) The term Senior Procurement Executive means, for DOE:

Department of Energy--Director, Office of Procurement and Assistance Management, DOE;

National Nuclear Security Administration--Administrator for Nuclear Security, NNSA; and

Federal Energy Regulatory Commission--Chairman, FERC.

H-30 ORO H12 Other Government Contractors (OCT 2004)

The Government may undertake or award other contracts for additional work or services. The Contractor agrees to fully cooperate with such other contractors and Government employees and carefully fit its own work to such other work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. If DOE determines that the Contractor's activities may interfere with another DOE contractor, the Contracting Officer shall so notify the Contractor and the Contractor shall comply with any instructions the Contracting Officer may provide.

H-31 Change in Requirements

a. Material changes to the waste acceptance criteria made by DOE, and materially revised requirements imposed by any Government agency that affect Contractor's waste processing procedures, shall be handled in accordance with FAR 52.243-2 Changes – Cost Reimbursement.

b. Variations found during contract performance in the general chemical and physical waste characteristics of the waste streams from the information provided by DOE that materially affect Contractor's waste processing procedures, shall be handled in accordance with FAR 52.243-2 Changes – Cost Reimbursement.

H-32 Advance Agreement on Costs (AUG 2006)

Any costs incurred prior to completion of the Defense Contract Audit Agency proposal audit will be allowable if they are incurred in accordance with other clauses in this contract and in accordance with Part 31 of the FAR. All cost and pricing data is subject to certification in the accordance with FAR 15.406-2.

All costs shall be allocated in accordance with an approved cost Accounting Standards Board (CASB) Disclosure Statement. All costs incurred and billed prior to the approval of the CASB Disclosure Statement shall be adjusted to comply with approved practices.

SECTION I - CONTRACT CLAUSES

I-1 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): <http://www.arnet.gov/far/>

I-2 52.202-1 Definitions (JUL 2004)

(a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless--

- (1) The solicitation, or amended solicitation, provides a different definition;
- (2) The contracting parties agree to a different definition;
- (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

I-3 52.203-3 Gratuities (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative -

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled -

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the

person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I-4 52.203-5 Covenant Against Contingent Fees (APR 1984)

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

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

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

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

I-5 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995)

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

I-6 52.203-7 Anti-Kickback Procedures (JUL 1995)**(a) Definitions.**

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

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

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

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

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

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

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

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

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

- (c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
- (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
- (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
- (5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

I-7 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)

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

- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

I-8 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be:
 - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.
 - (3) For cost-plus-award-fee contracts:
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may:
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
 - (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

I-9 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEP 2005)

(a) Definitions.

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

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

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

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

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

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

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

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

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

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

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

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

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

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

(b) Prohibitions. (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those agency and legislative liaison activities expressly authorized by paragraph (b)(3)(i) of this clause are permitted under this clause.

(ii) Professional and technical services. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of -

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

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

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those professional and technical services expressly authorized by paragraph (b)(3)(ii) of this clause are permitted under this clause.

(4) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure. (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

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

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

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

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

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

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

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

(e) Penalties. (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

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

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

I-10 52.204-4 Printed or Copied Double-sided on Recycled Paper (AUG 2000)**(a) Definitions.** As used in this clause -

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

Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as -

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

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

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

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as -
 - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper,

book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

I-11 52.204-9 Personal Identity Verification of Contractor Personnel (JAN 2006)

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

I-12 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAN 2005)

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

I-13 52.215-2 Audit and Records--Negotiation (JUN 1999)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.
- (c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to -
- (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.
- (d) Comptroller General - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
- (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating
- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
 - (2) The data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this

clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and -

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

I-14 52.215-8 Order of Precedence--Uniform Contract Format (Oct 1997)

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

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

I-15 52.215-11 Price Reduction for Defective Cost or Pricing Data--Modifications (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--
- (1) The actual subcontract; or
 - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
 - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--
- (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if--

- (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

I-16 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997)

- (a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because -
 - (1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
 - (2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
- (b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which -
 - (1) The actual subcontract; or
 - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

- (c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
 - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if -
- (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if -
- (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid -
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

I-17 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997)

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

I-18 52.215-13 Subcontractor Cost or Pricing Data-- Modifications (Oct 1997)

- (a) The requirements of paragraphs (b) and (c) of this clause shall--
 - (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
 - (2) Be limited to such modifications.
- (b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

I-19 52.215-15 Pension Adjustments and Asset Reversions. (OCT 2004)

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

I-20 52.215-21 Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data--Modifications (Oct 1997)

- (a) Exceptions from cost or pricing data.
 - (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—
 - (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
 - (ii) Information on modifications of contracts or subcontracts for commercial items.
 - (A) If—

- (1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and
 - (2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.
- (B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--
- (1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - (2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - (3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

- (1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
- (2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

I-21 52.216-7 Allowable Cost and Payment (DEC 2002) as modified by DEAR 952.216-7 Alternate II

(a) Invoicing.

- (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulation (DEAR), subpart 31.2 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 14th day for 6 months thereafter 30 days 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

I-21 52.216-7 Allowable Cost and Payment (DEC 2002)

(a) Invoicing.

- (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 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 14th day for 6 months thereafter 30 days 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 forms of payment to subcontractors.
- (2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless -
- (i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
 - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).
- (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.
- (4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.
- (c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.
- (d) *Final indirect cost rates.*
- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
 - (2) (i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.
(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
 - (3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding

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

- (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- (5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
- (6) (i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--
 (A) Determine the amounts due to the Contractor under the contract; and
 (B) Record this determination in a unilateral modification to the contract.
 (ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.
- (e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates -
- (1) Shall be the anticipated final rates; and
- (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.
- (g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be -
- (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or
- (2) Adjusted for prior overpayments or underpayments.
- (h) *Final payment.*
- (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable 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-22 52.216-8 Fixed Fee (MAR 1997)

- (a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.
- (b) Payment of the fixed fee shall be made as specified in the Schedule; provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

I-23 52.216-9 Fixed Fee - Construction (MAR 1997)

- (a) The Government shall pay to the Contractor for performing this contract the fixed fee specified in the Schedule.
- (b) Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) of this section.
- (c) After the payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

I-24 52.217-8 Option to Extend Services (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor at least 15 days prior to expiration of the contract.

I-25 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 at least 30 days prior to expiration of the contract; 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 3 years.

I-26 52.219-8 Utilization of Small Business Concerns (MAY 2004)

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing

contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract -

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

"Service-disabled veteran-owned small business concern" -

(1) Means a small business concern -

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

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

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

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern -

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

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern -

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

I-27 52.219-9 Small Business Subcontracting Plan (JUL 2005)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause -

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

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

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

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

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

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

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of -

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns;
and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to -

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, Service-disabled veteran-owned small business concerns; HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with -

- (i) Small business concerns; -
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will -

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating -

- (A) Whether small business concerns were solicited and, if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- (D) Whether HUBZone small business concerns were solicited and, if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
- (F) Whether women-owned small business concerns were solicited and, if not, why not; and
- (G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact -

- (A) Trade associations;
- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through -

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns.

Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

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

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

I-28 52.219-16 Liquidated Damages - Subcontracting Plan (JAN 1999)

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

Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

I-29 52.222-3 Convict Labor (JUN 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons--

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

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

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

I-30 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 2005)

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

I-31 52.222-6 Davis-Bacon Act (JUL 2005)

(a) Definition.--Site of the work--(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

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

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

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

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

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

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

I-32 52.222-7 Withholding of Funds (FEB 1988)

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

I-33 52.222-8 Payrolls and Basic Records (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of

wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (2) Each payroll submitted shall be accompanied by a Statement of Compliance, signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify -
- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the Statement of Compliance required by subparagraph (b)(2) of this clause.
- (4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or

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

I-34 52.222-9 Apprentices and Trainees (JUL 2005)

(a) Apprentices. (1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed--

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS,

withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

I-35 52.222-10 Compliance with Copeland Act Requirements (FEB 1988)

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

I-36 52.222-11 Subcontracts (Labor Standards) (JUL 2005)

(a) Definition. Construction, alteration or repair, as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation--

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled--

- (1) Davis-Bacon Act;
- (2) Contract Work Hours and Safety Standards Act--Overtime Compensation (if the clause is included in this contract);
- (3) Apprentices and Trainees;
- (4) Payrolls and Basic Records;
- (5) Compliance with Copeland Act Requirements;
- (6) Withholding of Funds;
- (7) Subcontracts (Labor Standards);
- (8) Contract Termination--Debarment;
- (9) Disputes Concerning Labor Standards;
- (10) Compliance with Davis-Bacon and Related Act Regulations; and
- (11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

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

I-37 52.222-12 Contract Termination - Debarment (FEB 1988)

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

I-38 52.222-13 Compliance with Davis-Bacon and Related Act Regulations (FEB 1988)

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

I-39 52.222-14 Disputes Concerning Labor Standards (FEB 1988)

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

I-40 52.222-15 Certification of Eligibility (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

I-41 52.222-21 Prohibition of Segregated Facilities (FEB 1999)

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

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

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

I-42 52.222-26 Equal Opportunity (APR 2002)

(a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to -

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

I-43 52.222-27 Affirmative Action Compliance Requirements for Construction (FEB 1999)

(a) *Definitions.* "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means -

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's

or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other

information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by -

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided, the Contractor -

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to -

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

I-44 52.222-30 Davis Bacon Act—Price Adjustment (None or Separately Specified Method) (DEC 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of—

- (1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;
- (2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or
- (3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

I-45 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)

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

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

Executive and top management means any employee--

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

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

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists.

The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

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

Special disabled veteran means--

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

Veteran of the Vietnam era means a person who--

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred--
 - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
 - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
 - (2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed--
 - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
 - (ii) Between August 5, 1964, and May 7, 1975, in all other cases.
- (b) General. (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - (iii) Rate of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
- (c) Listing openings. (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
- (2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise

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

- (d) **Applicability.** This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.
- (e) **Postings.** (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
- (2) The employment notices shall--
- (i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
- (ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.
- (3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
- (4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.
- (f) **Noncompliance.** If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (g) **Subcontracts.** The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

I-46 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)

(a) **General.** (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as -

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

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

- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
- (ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

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

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

I-47 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)

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

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS100, entitled "Federal Contractor Veterans' Employment Report (VETS100 Report)".

(c) The Contractor shall submit VETS100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12 month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date-

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that-

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

I-48 52.222-41 Service Contract Act of 1965, as Amended (JUL 2005)

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or

disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification

from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to

service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act -

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all

service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the

U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision -

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I-49 52.222-42 Statement of Equivalent Rates for Federal Hires (MAY 1989)

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

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

Employee Class Monetary Wage - Fringe Benefits

None

I-50 52.223-5 Pollution Prevention and Right-to-Know Information (AUG 2003)**(a) Definitions.** As used in this clause--

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

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

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

I-51 52.223-6 Drug-Free Workplace (MAY 2001)**(a) Definitions.** As used in this clause -

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

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

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

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor

in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

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

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

- (b) The Contractor, if other than an individual, shall - within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration -
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about -
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;
 - (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will -
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
 - (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or

- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
 - (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

I-52 52.223-10 Waste Reduction Program. (AUG 2000)

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

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

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

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

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

I-53 52.223-14 Toxic Chemical Release Reporting. (AUG 2003)

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

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

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

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

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094.

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt -

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall -

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall -

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

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

I-54 52.224-1 Privacy Act Notification (APR 1984)

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

I-55 52.224-2 Privacy Act (APR 1984)

(a) The Contractor agrees to -

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

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

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

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

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

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and

that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

- (3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

I-56 52.225-1 Buy American Act - Supplies (JUN 2003)

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

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means -

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means -

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

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

- (b) The Buy American Act (41 U.S.C. 10a-10d) provides a preference for domestic end products for supplies acquired for use in the United States.

- (c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.
- (d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act - Certificate."

I-57 52.225-11 Buy American Act - Construction Materials under Trade Agreements. (APR 2006)

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

"Caribbean Basin country construction material" means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means -

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands,

Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means -

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"Free Trade Agreement country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

"Least developed country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a

new and different construction material distinct from the materials from which it was transformed.

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

WTO GPA country construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or, designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

None

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that -

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including -

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material description	Unit of Measure	Quantity	Price (Dollars) \\\
Item 1:			
Foreign construction material
Domestic construction material

Item 2:

Foreign construction material

Domestic construction material

\\ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued). List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

I-58 52.225-13 Restrictions on Certain Foreign Purchases (FEB 2006)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

I-59 52.227-1 Authorization and Consent. (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (however, omission

of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.)

I-60 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. (AUG 1996)

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

I-61 52.227-3 Patent Indemnity. (APR 1984)

- (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as construction work) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

I-62 52.227-6 Royalty Information. (APR 1984)

- (a) Cost or charges for royalties. When 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.
 - (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.

I-63 52.227-9 Refund of Royalties. (APR 1984)

- (a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.
- (b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.
- (c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.
- (d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.
- (e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

I-64 52.227-13 Patent Rights - Acquisition by the Government (JAN 1997)

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

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

"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work 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)) must also occur during the period of contract performance.

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

(2) *Greater rights determinations.* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) below, in accordance with the procedures of paragraph 27.304-1(a) of the Federal Acquisition Regulation (FAR). A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Head of the Contracting Agency or designee at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) below, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) below, and to the reservations and conditions deemed to be appropriate by the Head of the Contracting Agency or designee.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.* (1) With respect to each subject invention to which the Contractor retains principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that -

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with subdivision (c)(1)(ii) above. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise

derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subdivision (i) above in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subdivision (ii) above, and for the reporting of utilization information as required by subdivision (iii) above, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) below. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

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

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) When the Government has the right to receive title, and does not elect to secure a patent in a foreign country, the Contractor may elect to retain such rights in any foreign country in which the Government elects not to secure a patent, subject to the Government's rights in subparagraph (c)(1) of this clause.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor shall promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and stating that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) of this section have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (2) above.

(5) The Contractor agrees subject to FAR 27.302(i) that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or

required to be furnished pursuant to this clause.

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

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

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

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

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

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) above;

(ii) Disclose any subject invention pursuant to subparagraph (e)(2) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) below.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) above, and acceptable final report pursuant to subdivision (e)(3)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be

construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) The Contractor shall include this clause (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor -

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(i) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

I-65 970.5227-1 Rights in Data-Facilities (DEC 2000)

(a) *Definitions.* (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

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

(b) Allocation of Rights. (1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of

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

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

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

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

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

(2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting. (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior

approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

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

Limited Rights Notice

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

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the

restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

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

Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No.----- . It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

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

Restricted Rights Notice-Short Form

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

(End of Notice)

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

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

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

I-66 52.227-16 Additional Data Requirements. (JUN 1987)

- (a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data - General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.
- (b) The Rights in Data - General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data - General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.
- (c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

- (d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

I-67 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)

Except for data contained on pages [All pages and throughout the proposal, which the offeror considers confidential and proprietary information], it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in the proposal dated None, upon which this contract is based.

I-68 52.228-2 Additional Bond Security (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

- (a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by the Government;
- (c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or
- (d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

I-69 52.228-7 Insurance—Liability to Third Persons (MAR 1996)

(a) (1) Except as provided in paragraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

- (c) The Contractor shall be reimbursed—
- (1) For that portion—
 - (i) Of the reasonable cost of insurance allocable to this contract; and
 - (ii) Required or approved under this clause; and
 - (2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—
 - (i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or
 - (ii) Death or bodily injury.
- (d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—
- (1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;
 - (2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or
 - (3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—
 - (i) All or substantially all of the Contractor's business;
 - (ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
 - (iii) A separate and complete major industrial operation in connection with the performance of this contract.
- (f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this contract.
- (g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—
- (1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
 - (2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
 - (3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

I-70 52.228-11 Pledges of Assets (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond -

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of -

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide -

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owner; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

I-71 52.228-12 Prospective Subcontractor Requests for Bonds (OCT 1995)

In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

I-72 52.228-15 Performance and Payment Bonds – Construction (SEPT 2005)

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

"Original contract price" means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25)*. The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25-A)*. The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection*. (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds*. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds*. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register* or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 3133(c))*. Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

I-73 52.229-3 Federal, State, and Local Taxes (APR2003)

(a) As used in this clause--

"All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax

or other employment taxes.

"After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Contract date," means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

I-74 52.230-2 Cost Accounting Standards (APR 1998)

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—
 - (1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and

subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

- (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
- (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
- (4)
 - (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.
 - (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
 - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
- (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

- (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR Part 9904 or a CAS rule or regulation in 48 CFR Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

I-75 52.230-6 Administration of Cost Accounting Standards (APR 1996)

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

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

- (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards- Educational Institution; or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practice):
- (i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
 - (ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting officer of the determination of noncompliance.
- (b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer with 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
- (1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards-Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards-Educational Institution, which have an award date before the effective date of that standard or cost principle.
 - (2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clause at 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards-Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.
 - (3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

- (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.
- (e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5 -
- (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and
 - (2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:
 - (i) Subcontractor's name and subcontract number.
 - (ii) Dollar amount and date of award.
 - (iii) Name of Contractor making the award.
 - (iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230-2, 52.230-3, or 52.230-5, unless these changes have already been reported.
- (f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agreed to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.
- (g) For subcontracts containing the clauses at 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

I-76 52.232-17 Interest (JUN 1996)

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
- (1) The date fixed under this contract.

- (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
 - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I-77 52.232-22 Limitation of Funds (APR 1984)

- (a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.
- (b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.
- (c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.
- (d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will

allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

- (f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause -
- (1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and
 - (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of -
 - (i) The amount then allotted to the contract by the Government or;
 - (ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.
- (g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- (h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.
- (i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of -
- (1) The amount previously allotted by the Government or;
 - (2) If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.
- (k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable

distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

- (l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

I-78 52.232-23 Assignment of Claims (JAN 1986)

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

I-79 52.232-25 Prompt Payment (OCT 2003) -- Alternate I (FEB 2002)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—

(1) Due date.

- (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:
 - (A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).
 - (B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

- (ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.
- (2) Certain food products and other payments.
- (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--
 - (A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.
 - (B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.
 - (C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.
 - (D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.
 - (ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.
- (3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.
- (i) Name and address of the Contractor.
 - (ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

- (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
 - (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
 - (v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
 - (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
 - (vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.
 - (viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
 - (ix) Electronic funds transfer (EFT) banking information.
 - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
 - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.
 - (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
 - (x) Any other information or documentation required by the contract (e.g., evidence of shipment).
- (4) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.
- (i) The designated billing office received a proper invoice.
 - (ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.
 - (iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.
- (5) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.
- (i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the

supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

- (ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

- (6) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) Additional interest penalty.

- (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--
 - (A) The Government owes an interest penalty of \$1 or more;
 - (B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and
 - (C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.
- (ii) (A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--
 - (1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
 - (2) Attach a copy of the invoice on which the unpaid late payment interest is due; and
 - (3) State that payment of the principal has been received, including the date of receipt.
- (B) If there is no postmark or the postmark is illegible--
 - (1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or
 - (2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

- (iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).
- (b) Contract financing payment. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.
- (c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.
- (d) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.
- (e) Invoices for interim payments. For interim payments under this cost-reimbursement contract for services—
 - (1) Paragraphs (a)(2), (a)(3), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i) do not apply;
 - (2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and
 - (3) The contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR 52.216-7, Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

I-80 52.232-27 Prompt Payment for Construction Contracts (SEP 2005)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—

- (1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:
 - (i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.
 - (A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at

the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

- (B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.
- (ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).
 - (A) The due date for making such payments is the later of the following two events:
 - (1) The 30th day after the designated billing office receives a proper invoice from the Contractor.
 - (2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.
 - (B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.
- (2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.
 - (i) Name and address of the Contractor.
 - (ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)
 - (iii) Contract number or other authorization for work or services performed (including order number and contract line item number).
 - (iv) Description of work or services performed.
 - (v) Delivery and payment terms (e.g., discount for prompt payment terms).
 - (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
 - (vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

- (viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.
 - (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
 - (x) Electronic funds transfer (EFT) banking information.
 - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
 - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.
 - (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
 - (xi) Any other information or documentation required by the contract.
- (3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.
- (i) The designated billing office received a proper invoice.
 - (ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.
 - (iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.
- (4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.
- (i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to

accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

- (ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

- (5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

- (6) Additional interest penalty.

- (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

- (A) The Government owes an interest penalty of \$1 or more;
- (B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and
- (C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

- (ii) (A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--
- (1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
 - (2) Attach a copy of the invoice on which the unpaid late payment interest was due; and
 - (3) State that payment of the principal has been received, including the date of receipt.
- (B) If there is no postmark or the postmark is illegible--
- (1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or
 - (2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

- (b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

- (c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:
- (1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.
 - (2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--
 - (i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and
 - (ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.
 - (3) Subcontractor clause flowdown. A clause requiring each subcontractor to--
 - (i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and
 - (ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- (d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--
- (1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;
 - (2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and
 - (3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--
 - (i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and
 - (ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

- (e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--
- (1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;
 - (2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;
 - (3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;
 - (4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--
 - (i) Make such payment within--
 - (A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or
 - (B) Seven days after the Contractor recovers such funds from the Government; or
 - (ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;
 - (5) Notice to Contracting Officer. Notify the Contracting Officer upon--
 - (i) Reduction of the amount of any subsequent certified application for payment; or
 - (ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--
 - (A) The amounts withheld under paragraph (e)(1) of this clause; and
 - (B) The dates that such withholding began and ended; and
 - (6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--
 - (i) The day the identified subcontractor performance deficiency is corrected; or
 - (ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

- (f) Third-party deficiency reports--(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with the Miller Act (40 U.S.C. 3133), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause--
- (i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and
 - (ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.
- (2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--
- (i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or
 - (ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.
- (g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying--
- (1) The amount to be withheld;
 - (2) The specific causes for the withholding under the terms of the subcontract; and
 - (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.
- (h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.
- (i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

I-81 52.232-33 Payment by Electronic Funds Transfer - Central Contractor Registration (Oct 2003)

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either -

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information.

The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment.

The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment.

If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for uncompleted or erroneous transfers.

- (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for - (i) Making a correct payment; (ii) Paying any prompt payment penalty due; and (iii) Recovering any erroneously direct funds.
- (2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) EFT and prompt payment.

A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims.

If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of the clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent.

The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) Payment information.

The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

I-82 52.233-1 Disputes (JUL 2002) -- Alternate I (DEC 1991)

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

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

I.83 52.233-3 Protest after Award (AUG 1996) - Alternate I (JUN 1985)

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

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if -

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

I-84 52.236-18 Work Oversight in Cost Reimbursement Construction Contracts (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

I-85 52.236-19 Organization and Direction of the Work (APR 1984)

- (a) When this contract is executed, the Contractor shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.
- (b) Work performance under this contract shall be under the full-time resident direction of
- (1) the Contractor, if the Contractor is an individual;
 - (2) one or more principal partners, if the Contractor is a partnership; or
 - (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Contractor may be represented in

the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

I-86 52.236-5 Material and Workmanship (APR 1984)

- (a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

I-87 52.236-7 Permits and Responsibilities (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

I-88 52.236-25 Requirements for Registration of Designers (JUN 2003)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

I-89 52.237-2 Protection of Government Buildings, Equipment, and Vegetation.(APR 1984)

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

I-90 52.242-1 Notice of Intent to Disallow Costs (APR 1984)

(a) Notwithstanding any other clause of this contract -

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

I-91 52.242-3 Penalties for Unallowable Costs (MAY 2001)

(a) Definition. "Proposal," as used in this clause, means either -

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which -

- (i) Relates to any payment made on the basis of billing rates; or
- (ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to -

- (1) The amount of the disallowed cost allocated to this contract; plus
- (2) Simple interest, to be computed -
 - (i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and
 - (ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.).
- (g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.
- (h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

I-92 52.242-4 Certification of Final Indirect Costs (JAN 1997)

- (a) The Contractor shall -
 - (1) Certify any proposal to establish or modify final indirect cost rates;
 - (2) Use the format in paragraph (c) of this clause to certify; and
 - (3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.
- (b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.
- (c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to

the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

I-93 52.242-13 Bankruptcy (JUL 1995)

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

I-94 52.243-2 Changes – Cost Reimbursement (AUG 1987) - Alternate II (APR 1984)

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the

order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the -

- (1) Estimated cost, delivery or completion schedule, or both;
 - (2) Amount of any fixed fee; and
 - (3) Other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

I-95 52.243-2 Changes - Cost-Reimbursement (AUG 1987) - Alternate III (APR 1984)

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the plans and specifications or instructions incorporated in the contract.
- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the -
- (1) Estimated cost, delivery or completion schedule, or both;
 - (2) Amount of any fixed fee; and
 - (3) Other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

I-96 52.243-6 Change Order Accounting (APR 1984)

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

I.97 52.244-2 Subcontracts (AUG 1998)

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

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- (b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.
- (c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.
- (d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that -

- (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
- (2) Is fixed-price and exceeds -
- (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
 - (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- (e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:
- EnergX TN
- (f) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:
- (i) A description of the supplies or services to be subcontracted.
 - (ii) Identification of the type of subcontract to be used.
 - (iii) Identification of the proposed subcontractor.
 - (iv) The proposed subcontract price.
 - (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
 - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
 - (vii) A negotiation memorandum reflecting -
 - (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

- (g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination -
- (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the allowability of any cost under this contract; or
 - (3) To relieve the Contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: []

I-98 52.244-5 Competition in Subcontracting (DEC 1996)

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

I-99 52.244-6-Subcontracts for Commercial Items (FEB 2006)

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

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

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

(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

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

(iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

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

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

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

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

I-100 52.245-19 Government Property Furnished "As Is" (APR 1984)

(a) The Government makes no warranty whatsoever with respect to Government property furnished "as is," except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available on an "as is" basis. Such repair will be at the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the

facts and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property or (2) effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

- (d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the Government Property clause of this contract.

I-101 52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, OR Labor-Hour Contracts) (MAY 2004) as modified by 952.245-5

(a) *Government-furnished property.*

- (1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of -
- (i) All or substantially all of the Contractor's business;
 - (ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or
 - (iii) A separate and complete major industrial operation connected with performing this contract.
- (2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
- (3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.
- (4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.
- (5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make

a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.*

- (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.
- (2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any -
 - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
 - (ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) *Title.*

- (1) The Government shall retain title to all Government-furnished property.
- (2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.
- (3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon -
 - (i) Issuance of the property for use in contract performance;
 - (ii) Commencement of processing of the property for use in contract performance; or
 - (iii) Reimbursement of the cost of the property by the Government, whichever occurs first.
- (4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

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

(e) *Property administration.*

- (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart

45.5 and DOE Acquisition Regulation Subpart 945.5, as in effect on the date of this contract.

- (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5.
 - (3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) *Limited risk of loss.*
- (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
 - (2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage) -
 - (i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
 - (ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (iii) For which the Contractor is otherwise responsible under the express terms of this contract;
 - (iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
 - (v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.
 - (3) (i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that

such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

- (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage -
 - (A) Did not result from the Contractor's failure to maintain an approved program or system; or
 - (B) Occurred while an approved program or system was maintained by the Contractor.
- (4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.
- (5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of -
 - (i) The lost, destroyed, or damaged Government property;
 - (ii) The time and origin of the loss, destruction, or damage;
 - (iii) All known interests in commingled property of which the Government property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

- (7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.
- (8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.
- (9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.
- (h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for -
- (1) Any delay in delivery of Government-furnished property;
 - (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of Government-furnished property; or
 - (4) Failure to repair or replace Government property for which the Government is responsible.
- (i) *Government property disposal.* Except as provided in paragraphs (i)(1)(i), (i)(2), and (i)(8)(i) of this clause, the Contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer.
- (1) Scrap.
 - (i) Contractor with an approved scrap procedure.
 - (A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.
 - (B) For scrap from other than production or testing, the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are

- consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that--
- (1) Requires demilitarization;
 - (2) Is a classified item;
 - (3) Is generated from classified items;
 - (4) Contains hazardous materials or hazardous wastes;
 - (5) Contains precious metals; or
 - (6) Is dangerous to the public health, safety, or welfare.
- (ii) Contractor without an approved scrap procedure. The Contractor shall submit an inventory disposal schedule for all scrap.
- (2) Pre-disposal requirements. When the Contractor determines that a property item acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, is no longer needed for performance of this contract, the Contractor, in the following order of priority:
- (i) May purchase the property at the acquisition cost.
 - (ii) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).
 - (iii) Shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not purchased under paragraph (i)(2)(i) of this clause, could not be returned to a supplier, or could not be used in the performance of other Government contracts.
- (3) Inventory disposal schedules.
- (i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify--
 - (A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of that contract; and
 - (B) Property acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, that is no longer required for performance of that contract.
 - (ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.
 - (iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare-- separate inventory disposal schedules for--
 - (A) Special test equipment with commercial components;
 - (B) Special test equipment that does not contain commercial components;
 - (C) Printing equipment;
 - (D) Computers, components thereof, peripheral equipment, and related equipment;
 - (E) Precious Metals;
 - (F) Nonnuclear hazardous materials or hazardous wastes; or
 - (G) Nuclear materials or nuclear wastes.
 - (iv) Property with the same description, condition code, and reporting location may be grouped in a single line item. The Contractor shall describe special test equipment

in sufficient detail to permit an understanding of the special test equipment's intended use.

- (4) **Submission requirements.** The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--
- (i) Thirty days following the Contractor's determination that a Government property item is no longer required for performance of the contract;
 - (ii) Sixty days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or
 - (iii) One hundred twenty days, or such longer period as may be approved by the Plant Clearance Officer, following contract termination in whole or in part.
- (5) **Corrections.** The Plant Clearance Officer may require the Contractor to correct an inventory disposal schedule or may reject a schedule if the property identified on the schedule is not accountable under this contract or is not in the quantity or condition indicated.
- (6) **Postsubmission adjustments.** The Contractor shall provide the Plant Clearance Officer at least 10 working days advance written notice of its intent to remove a property item from an approved inventory disposal schedule. Unless the Plant Clearance Officer objects to the intended schedule adjustment within the notice period, the Contractor may make the adjustment upon expiration of the notice period.
- (7) **Storage.**
- (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to provide disposal instructions within 120 days following acceptance of an inventory disposal schedule, might entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.
 - (ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises at which the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility must be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability under this contract for such property.
- (8) **Disposition instructions.**
- (i) If the Government does not provide disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.
 - (ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government property as directed by the Plant Clearance Officer. The Contractor shall remove and destroy any markings identifying the property as Government property prior to disposing of the property.
 - (iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. Any equitable adjustment incident to the Contracting Officer's direction to demilitarize Government property shall be made in accordance with paragraph (h) of this clause.

(9) Disposal proceeds. The Contractor shall credit the net proceeds from the disposal of Government property to the cost of work covered by this contract, or to the Government as directed by the Contracting Officer.

(10) Subcontractor inventory disposal schedules. The Contractor shall require a subcontractor that is using property accountable under this contract at a subcontractor-managed site to submit inventory disposal schedules to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (i)(4) of this clause.

(j) Abandonment of Government property.

(1) The Government will not abandon sensitive Government property without the Contractor's written consent;

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place at which time all obligations of the Government regarding such abandoned property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

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

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

I-102 52.245-9 Use and Charges (AUG 2005)

(a) Definitions. As used in this clause:

Acquisition cost means the acquisition cost recorded in the Contractor's property control system or, in the absence of such record, the value attributed by the Government to a Government property item for purposes of determining a reasonable rental charge.

Government property means all property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both Government-furnished property and contractor-acquired property as defined in FAR 45.101.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Rental period means the calendar period during which Government property is made available

for nongovernmental purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) Use of Government property. The Contractor may use the Government property without charge in the performance of--

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract--

(i) Approves a subcontract specifically authorizing such use; or

(ii) Otherwise authorizes such use in writing; and

(3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(c) Rental. If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor's right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) General.

(1) Rental requests shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.

(2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) Rental charge.

(1) Real property and associated fixtures.

(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use.

Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.

- (ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.
 - (iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.
 - (iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.
- (2) Other Government property. The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.
- (3) Alternative methodology. The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) Rental payments.

- (1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract, unless otherwise specified by the Contracting Officer.
 - (2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.
 - (3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any other failure to perform this contract according to its terms.
- (g) Use revocation.** At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

- (h) Unauthorized use. The unauthorized use of Government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

I-103 52.246-25 Limitation of Liability - Services (FEB 1997)

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that:
- (1) occurs after Government acceptance of services performed under this contract; and
 - (2) results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel", as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
- (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

I-104 952.222-70 Whistleblower Protection for Contractor Employees (DEC 2000)

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

I-105 952.223-75 Preservation of individual occupational radiation exposure records (APR 1984)

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

I-106 952.250-70 Nuclear hazards indemnity agreement (JUN 1996)

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- (d) (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 know, 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, "off-site" 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 clause 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 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 Audit and records--negotiation, 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 the 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.

I-107 52.204-7 Central Contractor Registration (JUL 2006)

(a) Definitions. As used in this clause—

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

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

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

“Registered in the CCR database” means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

- (1) An offeror may obtain a DUNS number—
 - (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.
- (2) The offeror should be prepared to provide the following information:
 - (i) Company legal business.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company Physical Street Address, City, State, and ZIP Code.
 - (iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).
 - (v) Company Telephone Number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).
 - (x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g) (1) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the

contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

I-108 52.248-1 Value Engineering (FEB 2000)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) Definitions.

"Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include -

- (1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;
- (2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and
- (3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office" includes any contracting office that the acquisition is transferred to, such

as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either -

- (1) Throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated; or
- (2) To the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

"Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

"Unit," as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that -

- (1) Requires a change to this, the instant contract, to implement; and
 - (2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change -
 - (i) In deliverable end item quantities only;
 - (ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or
 - (iii) To the contract type only.
- (c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (8) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:
- (1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.
 - (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
 - (3) Identification of the unit to which the VECP applies.
 - (4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.
 - (5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.
 - (6) A prediction of any effects the proposed change would have on collateral costs to the agency.
 - (7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) *Government action.*

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing rates.* If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon -

(1) This contract's type (fixed-price, incentive, or cost-reimbursement);

(2) The sharing arrangement specified in paragraph (a) of this clause (incentive, program requirement, or a combination as delineated in the Schedule); and

(3) The source of the savings (the instant contract, or concurrent and future contracts), as follows:

TABLE OMITTED

(g) *Calculating net acquisition savings.*

(1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings

(see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

- (2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) of this clause). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.
 - (3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.
 - (4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.
- (h) *Contract adjustment.* The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall -
- (1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;
 - (2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;
 - (3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;
 - (4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and
 - (5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:
 - (i) Fixed-price contracts - add to contract price.
 - (ii) Cost-reimbursement contracts - add to contract fee.
- (i) *Concurrent and future contract savings.*
- (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on

the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

- (2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by -
 - (i) Subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset; and
 - (ii) Multiplying the result by the Contractor's sharing rate.
- (3) The Contracting Officer shall calculate the Contractor's share of future contract savings by
 - (i) Multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period;
 - (ii) Subtracting any Government costs or negative instant contract savings not yet offset; and
 - (iii) Multiplying the result by the Contractor's sharing rate.
- (4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see paragraph (h)(3) of this clause) and shall not be subject to subsequent adjustment.
- (5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-4 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:
 - (i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.
 - (ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.
- (j) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.
- (k) *Relationship to other incentives.* Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

- (l) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments, provided, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.
- (m) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering clause of contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

I-109 52.248-3 Value Engineering - Construction (FEB 2000)

- (a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) of this clause.
- (b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal

administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) of this clause).

"Value engineering change proposal (VECP)" means a proposal that -

- (1) Requires a change to this, the instant contract, to implement; and
 - (2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change -
 - (i) In deliverable end item quantities only; or
 - (ii) To the contract type only.
- (c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (7) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:
- (1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.
 - (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
 - (3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) of this clause.
 - (4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.
 - (5) A prediction of any effects the proposed change would have on collateral costs to the agency.
 - (6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
 - (7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) *Government action.*

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing –*

(1) *Rates.* The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by -

- (i) 45 percent for fixed-price contracts; or
- (ii) 75 percent for cost-reimbursement contracts.

(2) *Payment.* Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to -

- (i) Accept the VECP;
- (ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and
- (iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

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(g) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing

any adjustment in this contract's price under paragraph (f) of this clause, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) *Data*. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering - Construction clause of contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

I.110 52.249-14 Excusable Delays (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -

- (1) The subcontracted supplies or services were obtainable from other sources;
- (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
- (3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or

more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

I.111 52.249-6 Termination (Cost-Reimbursement) (MAY 2004)

(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, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor -

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted -

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

I.112 52.249-6 Termination (Cost-Reimbursement) (MAY 2004) - Alternate I (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if -

(1) The Contracting Officer determines that a termination is in the Government's interest;
or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government -

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other

property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 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 settlement 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 actual work in place is to the total work in place 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, 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.

L113 52.251-1 Government Supply Sources (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from

"Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

I.114 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2000)

(a) Program Implementation. The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts. (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.

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

(3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

I.115 952.208-70 Printing (APR 1984)

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8 1/2 by 11 inches one side only, one color. A requirement is defined as a single publication document.

(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

I.116 952.224-70 Paperwork Reduction Act (APR 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

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

I.117 952.251-70 Contractor Employee Travel Discounts (DEC 2000)

(a) The contractor shall take advantage of travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

L118 952.231-71 Insurance-Litigation and Claims. (APR 2002)

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed--

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)--

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented in 48 CFR part 931, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements), shall not be reimbursed if such liabilities were caused by contractor managerial personnel's--

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit

educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j)(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in the Property clause in this contract.

(k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall--

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

SECTION J - LIST OF ATTACHMENTS

J-1. ORO J01 List Of Documents, Exhibits, and Other Attachments (MAY 1987)

Attachment	Description
A	Reporting Requirements
B	List of Government Property – Furnished
C	DOE Orders
D	Cost Payment Schedule
E	Wage Determination

J.2 ORO J10 Report Distribution Addressee List (MAY 1997)

The mailing address for distribution of A, B, C, D, E, G and H is as follows:

U. S. Department of Energy
 Oak Ridge Office
 P. O. Box 2001
 Oak Ridge, Tennessee

Office Identifier	Addressee
A	Environmental Management Division Contracting Officer Representative, EM-92 (appointed by separate memo)
B	Environmental Management Division Alternate Contracting Officer Representative, EM-92 (appointed by separate memo)
C	Procurement and Contracts Division Connie Bayless, Contract Specialist, AD-42
D	Lisa Carter, Contractor Human Resource Group, AD-44
E	Jenise Mullins, SE-32 Safety and Occupational Health Manager e-mail: mullinsjg@oro.doe.gov
F	Energy Finance & Accounting Service Center (EFASC) e-mail: costing@hq.doe.gov and Tammy.Ware@hq.doe.gov
G	Procurement and Contracts Division Rebecca Whitehead, Property & FIMS Administrator, AD-42
H	Procurement and Contracts Division Natasha White, Property Reports, AD-42

Reporting Requirements

<u>Reporting Requirements</u> (See ORO J10)	<u>Frequency</u> (one copy each)	<u>Distribution</u>
I. Vouchers/Invoices (SF 1034) Supporting Statement of Cost and Fee	Monthly	through VIPERS
II Labor/Cost Management and Accrual Report	Monthly	A/B/C/F
III. Management Plan including Workplace Substance Abuse Program (See 970.5223-4) Quality Control Plan Confidentiality Certifications Agreement (See ORO H65) Equal Employment Opportunity Report (EEO-1) (See 52.222-26)		A/B/C/D
IV. Corrective Action Items Status Report	Monthly	A/B/C
V. Other reports		
Individual Accident/Illness Report (DOE F 5484.3)	Monthly	A/B/C/E
Headcount Data Report by EEO-1	Quarterly	A/B/C/D
Quarterly Employment Report	10 days after each calendar quarter	A/B/C/D
Payroll and Residence Report	Annual by Jan 15	A/B/C/D
Tabulation of Work-Hours, Vehicle Usage and Property Valuation	Quarterly	A/B/C/E
Legal Management Plan	60 days after Award	A/C
VI. Property Reports		
Physical Inventories PMR 109-5201	Annual	G/H
PIDS Report FAR 45; CFR 109; 947.102-70	Annual	G/H
Semi-Annual Summary Report of DOE-Owned Plan & Capital Equipment	Annual by 9/15	G/H

<p>Exchange/Sale Report 41 CFR 102.39.75</p>	Annual	G/H
<p>NRC Property Held at DOE Facilities Report NRC Mgmt Directive 11.7, Part IX</p>	Annual	G/H
<p>Balanced Score Card Plan DOE HQ</p>	Annual	G/H
<p>Balanced Score Card Self Assessment Report DOE HQ</p>	Annual	G/H
<p>Termination Inventories FAR Part 45, Subpart 45.508</p>	Upon termination or completion of the contract	G
<p>FIMS QA Plan DOE O 430.1B</p>	Annual	G
<p>Review of Utilization of Real Property DOE O 430.1B</p>	Annual	G
<p>Other Real Estate Reports by DOE O 430.1B</p>	As requested	
<p>Federal Automotive Statistical Tool DOE HQ EO13149</p>	Annual	System Generated
<p>Government Property Missing, Lost Damaged or Theft Report 41 CFR 109-1.5112 and 1.5113</p>	Annual	G

LIST OF GOVERNMENT PROPERTY FURNISHED

- Facility: TRU Waste Processing Center, 100 WIPP Road, Lenoir City, TN
- The following attached list of Government Furnished Property requires final verification during the transition period.
- The Intellectual Property list will be finalized and transferred to the Government during the transition period, which will include a list of procedures.

Furnishings

As stated above, the classes of property transferred under this modification and provided to the Contractor as government-furnished property includes personal property. Included among the personal property are furnishings to wit:

**TRU Waste Processing Center
Property Inventory
7880 - Process Building and Waste Storage Areas**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Task Chair								Room 122
Side Chair								Room 122
Work Table								Room 122
File Cabinet	4 dr							Room 122
Desk								Room 123
Task Chair	fire proof							Room 123
Task Chair	fire proof							Room 123
Desk								Room 132
Task Chair								Room 132
Drafting Table								Room 231
Drafting Table								Room 231
Stool								Room 231
Stool								Room 231
Stool								Room 231
TV Cart	metal							Room 231
Folding Chair								Room 231
Folding Chair								Room 231
Folding Chair								Room 231
Folding Chair								Room 231
Task Chair	fire proof							Hot Cell
Task Chair								Control Station
Task Chair								Control Station
File Cabinet	fire proof, 2 dr vertical							NDA

TRU Waste Processing Center
 Property Inventory
 Trailer 7880B - Personnel Building, 1st Floor

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Wall Clock							7880B-2
Telephone	Parasonic	KXTG2431	SCAE368162				7880B-2
Telephone	Southwestern Bell	FM2555	1433780284				7880B-2
Storage Cabinet	metal						7880B-3
Storage Cabinet	metal						7880B-3
Refrigerator	GE	GTS18HBMBRWW	HA769203				7880B-4
Cabinet	metal						7880B-4
File Cabinet							7880B-4
Workstation	3 work surfaces, 2 pedestals, 2 shelves with undermount task lighting, wall panels						7880B-4
Workstation	3 work surfaces, 2 pedestals, 2 shelves with undermount task lighting, wall panels						7880B-4
Workstation	3 work surfaces, 2 pedestals, 2 shelves with undermount task lighting, wall panels						7880B-4
Workstation	3 work surfaces, 2 pedestals, 2 shelves with undermount task lighting, wall panels						7880B-4
Workstation	3 work surfaces, 2 pedestals, 3 shelves with undermount task lighting, wall panels						7880B-4
Bookcase	metal						7880B-4
Bookcase	metal						7880B-4
Telephone	Southwestern Bell	FM2572					7880B-4
Telephone	Southwestern Bell	FM2572					7880B-4
Telephone	Southwestern Bell	FM2572					7880B-4
Telephone	Southwestern Bell	FM2572					7880B-4
Telephone	Parasonic	KXTS10SW					7880B-4

TRU Waste Processing Center
 Property Inventory
 Trailer 7880B - Personnel Building, 1st Floor

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Task Chair (6 total)							7880B-4
Task Chair							7880B-4
Task Chair							7880B-4
Task Chair							7880B-4
Task Chair							7880B-4
Task Chair							7880B-4
Side Chair							7880B-4
Side Chair							7880B-4
Fan	floor						7880B-Hallway
Storage Cabinet	metal						7880B-Hallway

**TRU Waste Processing Center
Property Inventory
Trailer 7880B - Personnel Building, 2nd Floor**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Easel					x			7880B-1
Laminating Machine	Sparco	73503			x			7880B-1
Laminating Machine	Sparco	73503			x			7880B-1
Mail Sorter					x			7880B-1
Mail Sorter					x			7880B-1
Wall Clock					x			7880B-1
Wall Panels					x			7880B-2
Desk	wood				x			7880B-2
Desk	wood				x			7880B-2
Desk	wood				x			7880B-2
Desk	wood				x			7880B-2
Desk	wood				x			7880B-2
Side Chair					x			7880B-2
Task Chair					x			7880B-2
Task Chair					x			7880B-2
Task Chair					x			7880B-2
Task Chair					x			7880B-2
Task Chair					x			7880B-2
Task Chair					x			7880B-2
Task Chair					x			7880B-2
Task Chair					x			7880B-2
Bookcase	metal				x			7880B-2
Bookcase	metal				x			7880B-2
Bookcase	metal				x			7880B-2
Bookcase	metal				x			7880B-2
File Cabinet	vertical 4 dr				x			7880B-2
File Cabinet	vertical 4 dr				x			7880B-2
File Cabinet	vertical 4 dr				x			7880B-2
Telephone	Panasonic				x			7880B-2
Telephone	Panasonic				x			7880B-2
Telephone	Southwestern Bell				x			7880B-2

TRU Waste Processing Center
Property Inventory
Trailer 7880B - Personnel Building, 2nd Floor

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Telephone	Southwestern Bell				X		7880B-2
Telephone	Southwestern Bell				X		7880B-2
Folding Table					X		7880B-2
Folding Table					X		7880B-2
Folding Table					X		7880B-2
Folding Table					X		7880B-2
Desk	metal				X		7880B-2
Wall Clock					X		7880B-2
Fila Cabinet	vertical 2 dr				X		7880B-2
Fila Cabinet	vertical 2 dr				X		7880B-2
Fila Cabinet	vertical 2 dr				X		7880B-2
Whiteboard					X		7880B-2
Hutch	wood				X		7880B-2
Coat Rack					X		7880B-2
Fila Cabinet	lateral 4 dr				X		7880B-2
Desk	metal				X		7880B-2
Computer Table	wood				X		7880B-3
Fila Cabinet	lateral 5 dr				X		7880B-3
Bookcase	metal				X		7880B-3
Bookcase	metal				X		7880B-3
Bookcase	metal				X		7880B-3
Telephone	V Tech Telezapper				X		7880B-3
Telephone	Southwestern Bell				X		7880B-3
Telephone	AT&T				X		7880B-3
Telephone	Parasonic				X		7880B-3
Storage Cabinet	metal				X		7880B-3
Desk (5 total)	wood				X		7880B-3
Desk	wood				X		7880B-3
Desk	wood				X		7880B-3
Desk	wood				X		7880B-3

TRU Waste Processing Center
 Property Inventory
 Trailer 7880B - Personnel Building, 2nd Floor

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Desk	wood						7880B-3
Task Chair					x		7880B-3
Task Chair					x		7880B-3
Task Chair					x		7880B-3
File Cabinet	vertical 2 dr				x		7880B-3
File Cabinet	vertical 2 dr				x		7880B-3
Side Chair					x		7880B-3
Side Chair					x		7880B-3
File Cabinet					x		7880B-3
Bookcase	wood				x		7880B-3
File Cabinet	lateral 4 dr				x		7880B-3
File Cabinet	lateral 4 dr				x		7880B-3
File Cabinet	lateral 4 dr				x		7880B-3
Telephone	AT&T Cordless				x		7880B-3
Folding Table					x		7880B-3
Folding Table					x		7880B-3
Folding Table					x		7880B-3
Panel Walls					x		7880B-3
Coat Rack					x		7880B-3
Speaker					x		7880B-4
Whiteboard					x		7880B-4
TV Stand					x		7880B-4
Folding Table					x		7880B-4
Wall Clock					x		7880B-4
File Cabinet	vertical 5 dr				x		7880B-4
Recycling Plastic Can	large, w/ld				x		7880B-4
Recycling Plastic Can	large, w/ld				x		7880B-4
Desk	wood				x		7880B-5
Task Chair					x		7880B-5
Side Chair					x		7880B-5

TRU Waste Processing Center
 Property Inventory
 Traller 7880B - Personnel Building, 2nd Floor

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Side Chair					x		7880B-5
Computer Table	metal				x		7880B-5
Bookcase	metal				x		7880B-5
Whiteboard					x		7880B-5
Desk	wood, L shaped return				x		7880B-6
Task Chair					x		7880B-6
Task Chair					x		7880B-6
Side Chair					x		7880B-6
File Cabinet	vertical 4 dr				x		7880B-6
Bookcase	metal				x		7880B-6
Telephone	Parasonic				x		7880B-6
Desk	wood				x		7880B-7
Bookcase	wood				x		7880B-7
Table	wood				x		7880B-7
Table	Round, Conference 36"				x		7880B-7
Task Chair					x		7880B-7
Task Chair					x		7880B-7
Task Chair					x		7880B-7
Task Chair					x		7880B-7
Task Chair					x		7880B-7
Side Chair					x		7880B-7
Storage Cabinet	metal				x		7880B-7
File Cabinet	lateral 6 dr				x		7880B-7
Telephone	AT&T	959			x		7880B-7
Desk	wood				x		7880B-8
Task Chair					x		7880B-8
Task Chair					x		7880B-8
Task Chair					x		7880B-8
Folding Table					x		7880B-8
Bookcase	metal				x		7880B-8
Bookcase	metal				x		7880B-8

TRU Waste Processing Center
 Property Inventory
 Trailer 7880B - Personnel Building, 2nd Floor

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
File Cabinet	lateral 4 dr				X		7880B-8
Telephone	GE w/ answering machine				X		7880B-8
Desk	wood				X		7880B-9
File Cabinet	vertical 2 dr				X		7880B-9
File Cabinet	vertical 2 dr				X		7880B-9
Task Chair					X		7880B-9
Task Chair					X		7880B-9
Telephone	GE w/ answering machine				X		7880B-9
Bookcase					X		7880B-9
Fan					X		7880B-9
Coat Hook					X		7880B-9
Desk	metal				X		7880B-10
Task Chair					X		7880B-10
Computer Table	wood				X		7880B-10
Bookcase	metal				X		7880B-10
Coat Rack					X		7880B-10
File Cabinet	vertical 2 dr				X		7880B-10
Desk	wood				X		7880B-10
Task Chair					X		7880B-10
Bookcase	metal				X		7880B-10
Telephone	DuraBrand				X		7880B-10
Whiteboard					X		7880B-10
Telephone	Panasonic				X		7880B-10
Partition Walls					X		7880B-10

TRU Waste Processing Center
 Property Inventory
 Traller 7880M - Project Controls

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Desk	metal				x			7880M-1
Task Chair					x			7880M-1
Side Chair					x			7880M-1
Side Chair					x			7880M-1
File Cabinet	lateral, 5 dr				x			7880M-1
Table	round, conference				x			7880M-1
Whiteboard					x			7880M-1
Table	steelcase, non-folding				x			7880M-1
Telephone	AT&T	959	AY802639934		x			7880M-1
Wall Clock					x			7880M-1
Desk	wood				x			7880M-2
Credenza	wood				x			7880M-2
Whiteboard					x			7880M-2
Task Chair					x			7880M-2
Side Chair					x			7880M-2
File Cabinet	lateral, 4 dr				x			7880M-2
Bookcase	metal				x			7880M-2
Telephone	AT&T	959	AY802609939		x			7880M-2
Desk	metal				x			7880M-3
Table	steelcase, non-folding				x			7880M-3
Bookcase	metal				x			7880M-3
File Cabinet	lateral, 4 dr				x			7880M-3
Task Chair					x			7880M-3
Side Chair					x			7880M-3
Whiteboard					x			7880M-3
Telephone	RCA	23404RE3A	40030347		x			7880M-3

TRU Waste Processing Center
 Property Inventory
 Trailer 7880M - Project Controls

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Workstation (4 total)	3 work surfaces, 2 pedestals, 1 shelf, walls				x			7880M-4
Workstation	3 work surfaces, 2 pedestals, 1 shelf, walls				x			7880M-4
Workstation	3 work surfaces, 2 pedestals, 1 shelf, walls				x			7880M-4
Workstation	3 work surfaces, 2 pedestals, 1 shelf, walls				x			7880M-4
Refridgerator		HTS15BBMBRWV	GA623116		x			7880M-4
Whiteboard					x			7880M-4
Bulletin Board					x			7880M-4
File Cabinet					x			7880M-4
Microwave Oven					x			7880M-4
Bookcase					x			7880M-4
Task Chair (4 total)					x			7880M-4
Task Chair					x			7880M-4
Task Chair					x			7880M-4
Task Chair					x			7880M-4
Side Chair					x			7880M-4
Side Chair					x			7880M-4
Telephone					x			7880M-4
Telephone	Panasonic		KXTS27WQJDL0092442		x			7880M-4
Telephone	AT&T	859	AY802084785		x			7880M-4
Telephone	AT&T	959	AY802810179		x			7880M-4
Desk	wood				x			7880M-5
Credenza	metal				x			7880M-5
Computer Table	wood				x			7880M-5
Task Chair					x			7880M-5
Shelf	metal				x			7880M-5
Bookcase	metal				x			7880M-5

TRU Waste Processing Center
 Property Inventory
 Trailer 7880M - Project Controls

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Side Chair					x			7880M-5
Whiteboard					x			7880M-5
Telephone	BellSouth Premium System				x			7880M-5
Desk					x			7880M-6
Task Chair					x			7880M-6
Task Chair					x			7880M-6
Side Chair					x			7880M-6
Folding Table					x			7880M-6
File Cabinet	vertical, 5 dr				x			7880M-6
Bookcase	metal				x			7880M-6
Whiteboard					x			7880M-6
Desk	metal				x			7880M-7
Credenza	metal				x			7880M-7
Task Chair					x			7880M-7
Utility Shelf	metal				x			7880M-7
Utility Shelf	metal				x			7880M-7
Telephone	AT&T	959			x			7880M-7
Wall Clock					x			7880M-7
Utility Shelf	metal				x			7880M-8
Utility Cart	metal				x			7880M-8
Folding Table					x			7880M-8
Folding Table					x			7880M-8
Shelf	wood				x			7880M-8
Office Supplies	copy paper				x			7880M-8
Trash Can	large, with lid				x			7880M-8
Credenza	wood				x			7880M-8

TRU Waste Processing Center
 Property Inventory
 Trailer 7880M - Project Controls

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Speaker					X		7880M-B
Side Chair					X		7880M-B

**TRU Waste Processing Center
Property Inventory
Trailer 7880N - Procurement/Accounts Payable**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Workstation	3 work surfaces, 2 pedestals, 1 shelf with task light, wall panels	Herman Miller			x			7880N-1
Workstation	3 work surfaces, 2 pedestals, 1 shelf with task light, wall panels	Herman Miller			x			7880N-1
Task Chair					x			7880N-1
Telephone	Cortelco		004347		x			7880N-1
Telephone	AT&T	959	AY802538910		x			7880N-1
Folding Table (3 total)	metal				x			7880N-1
Folding Table	metal				x			7880N-1
Folding Table	metal				x			7880N-1
File Cabinet (10 total)	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
File Cabinet	lateral, 4 dr				x			7880N-1
Side Chair					x			7880N-1
Side Chair					x			7880N-1
File Cabinet	fireproof, vertical, 4 dr	Fireking	FL2005271030		x			7880N-1
Storage Cabinet	metal				x			7880N-1
Office Supplies	accordion envelopes, copy paper, file folders, printer cartridges,				x			7880N-1
Printer Stand	plastic				x			7880N-1

**TRU Waste Processing Center
Property Inventory
Trailer 7880N - Procurement/Accounts Payable**

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Desk	metal, L-shaped				x		7880N-2
Bookcase	metal				x		7880N-2
Bookcase	metal				x		7880N-2
File Cabinet	lateral, 4 dr				x		7880N-2
Folding Chair					x		7880N-2
Folding Chair					x		7880N-2
Task Chair					x		7880N-2
Telephone	AT&T	958	AY803233759		x		7880N-2
Office Supplies	hanging file folders, copy paper, paper towels, plastic cups, coffee supplies, twin pocket portfolios				x		7880N-3
Step Stool	plastic				x		7880N-3
Workstation	3 work surfaces, 2 pedestals, 1 hutch	Invincible			x		7880N-4
Bookcase	metal				x		7880N-4
Task Chair					x		7880N-4
Side Chair					x		7880N-4
File Cabinet	vertical, 2 dr				x		7880N-4
Desk	wood				x		7880N-5
Bookcase	wood				x		7880N-5
File Cabinet	lateral, 4 dr				x		7880N-5
Task Chair					x		7880N-5
Task Chair					x		7880N-5
Side Chair					x		7880N-5
Refridgerator	Estate by Whitpool				x		7880N-6
File Cabinet (8 total)	lateral, 4 dr	TT140K00K004	VSS3881835		x		7880N-6
File Cabinet	lateral, 4 dr				x		7880N-6

TRU Waste Processing Center
 Property Inventory
 Trailer 7880N - Procurement/Accounts Payable

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
File Cabinet	lateral, 4 dr				x		7880N-6
File Cabinet	lateral, 4 dr				x		7880N-6
File Cabinet	lateral, 4 dr				x		7880N-6
File Cabinet	lateral, 4 dr				x		7880N-6
File Cabinet	lateral, 4 dr				x		7880N-6
File Cabinet	lateral, 4 dr				x		7880N-6
Workstation	3 work surfaces, 2 pedestals, 1 shelf with task light, wall panels	Herman Miller			x		7880N-8
Workstation	3 work surfaces, 2 pedestals, 1 shelf with task light, wall panels	Herman Miller			x		7880N-8
Task Chair (3 total)	task light, wall panels				x		7880N-6
Task Chair					x		7880N-6
Task Chair					x		7880N-6
Telephone	Panasonic				x		7880N-6
Telephone	Southwestern Bell				x		7880N-6
Storage Cabinet	metal				x		7880N-6
Office Supplies	hanging file folders, post-it notes, pens, pencils, paper clips, binder clips, note pads, divider tabs, staples, diskettes, CDs				x		7880N-6

**TRU Waste Processing Center
Property Inventory
Trailer 7880R - Project Management**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Folding Table (5 total)					x			7880R-1
Folding Table					x			7880R-1
Folding Table					x			7880R-1
Folding Table					x			7880R-1
Folding Table					x			7880R-1
Conference Room Chair (20 total)					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Conference Room Chair					x			7880R-1
Folding Chair (13 total)					x			7880R-1
Folding Chair					x			7880R-1

**TRU Waste Processing Center
Property Inventory
Trailer 7880R - Project Management**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
Folding Chair					x			7880R-1
File Cabinet	fireproof, Fire King Turtle 4 dr	Turtle	FL2003005049		x			7880R-1
Whiteboard					x			7880R-1
Bookcase	metal				x			7880R-1
Wall Clock					x			7880R-1
Telephone	Polycom Speakerbox Soundstation 2W		G204390070465		x			7880R-1
AED Defibrillator					x			7880R-1
Speaker					x			7880R-1
Coat Rack					x			7880R-1
Desk	wood				x			7880R-2
Credenza	wood				x			7880R-2
Computer Table	wood				x			7880R-2
Table	wood				x			7880R-2
Conference Room Chair (6 total)					x			7880R-2
Conference Room Chair					x			7880R-2
Conference Room Chair					x			7880R-2
Conference Room Chair					x			7880R-2

**TRU Waste Processing Center
Property Inventory
Trailer 7880R - Project Management**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Conference Room Chair					x			7880R-2
Conference Room Chair					x			7880R-2
Task Chair					x			7880R-2
Bookcase (4 total)	wood				x			7880R-2
Bookcase	wood				x			7880R-2
Bookcase	wood				x			7880R-2
Bookcase	wood				x			7880R-2
Bulletin Board					x			7880R-2
Whiteboard					x			7880R-2
Telephone	RCA	25404RE3A	40076095		x			7880R-2
Coat Hook					x			7880R-2
Wall Clock					x			7880R-2
Desk	metal				x			7880R-3
Task Chair					x			7880R-3
Folding Chair					x			7880R-3
Folding Table					x			7880R-3
Fan	circular, table				x			7880R-3
Bookcase	metal				x			7880R-3
Lock Box					x			7880R-3
Wall Shelf					x			7880R-3
Hutch					x			7880R-3
File Cabinet	vertical, 2dr				x			7880R-3
Telephone	Majors, cordless		08AD554046843		x			7880R-3
Desk	metal				x			7880R-4
Desk	metal				x			7880R-4
File Cabinet	vertical, 4 dr				x			7880R-4
Bookcase	metal				x			7880R-4
Folding Chair					x			7880R-4

**TRU Waste Processing Center
Property Inventory
Trailer 7880R - Project Management**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Whiteboard					x			7880R-4
Side Chair					x			7880R-4
Coat Hook					x			7880R-4
Telephone	Panasonic	KXTS17W	IEALA116843		x			7880R-4
Desk	metal				x			7880R-5
Table	metal, wood				x			7880R-5
Folding Table					x			7880R-5
Task Chair (3 total)					x			7880R-5
Task Chair					x			7880R-5
Task Chair					x			7880R-5
Bookcase	metal				x			7880R-5
Telephone	Southwestern Bell	FM2555	14337902845		x			7880R-5
Lamp	Table				x			7880R-5
Desk	metal				x			7880R-6
Wall Shelf	wood				x			7880R-6
Bookcase	metal				x			7880R-6
Bookcase	metal				x			7880R-6
File Cabinet	lateral, 4 dr				x			7880R-6
Computer Table					x			7880R-6
Task Chair					x			7880R-6
Coat Hook					x			7880R-6
Folding Table					x			7880R-7
Conference Room Chair					x			7880R-7
Bookshelf (6 total)	wood				x			7880R-7
Bookshelf	wood				x			7880R-7
Bookshelf	wood				x			7880R-7
Bookshelf	wood				x			7880R-7
Bookshelf	wood				x			7880R-7

**TRU Waste Processing Center
Property Inventory
Trailer 7880R - Project Management**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Bookshelf	wood				x			7880R-7
Bookcase	metal				x			7880R-7
File Cabinet	vertical, 4 dr				x			7880R-7
Refrigerator	GE	GTS18FBMFRWW	GF786597		x			7880R-8
Wall Shelf (4 total)	wood, metal brackets				x			7880R-8
Wall Shelf	wood, metal brackets				x			7880R-8
Wall Shelf	wood, metal brackets				x			7880R-8
Wall Shelf	wood, metal brackets				x			7880R-8
Microwave Oven	GE	JES738WJ01	FG9750376		x			7880R-8
Office Supplies	binders, coffee supplies, notebooks, file folders				x			7880R-8
Radio	Motorola Radius	M1225			x			7880R-8
First Aid Kit					x			7880R-8
Computer Table					x			7880R-8
Stool	plastic				x			7880R-8
Folding Table					x			7880R-9
Folding Table					x			7880R-9
Storage Cabinet	metal				x			7880R-9
Bookcase	metal				x			7880R-9
Wall Shelf	wood, metal brackets				x			7880R-9
Wall Shelf	wood, metal brackets				x			7880R-9
Heavy Duty Hole Punch	Stanley Bostitch	03200			x			7880R-9
Office Supplies	copy paper, file folders, staplers, paper clips, notepads, copy stamps, 3HP, scales, mailing envelopes				x			7880R-9
Desk	metal				x			7880R-10
Computer Table	metal				x			7880R-10
Task Chair					x			7880R-10

**TRU Waste Processing Center
Property Inventory
Trailer 7880R - Project Management**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Task Chair					x			7880R-10
Side Chair					x			7880R-10
Bookcase	metal				x			7880R-10
Fan	table, circular				x			7880R-10
Coat Hook					x			7880R-10
Stand	metal				x			7880R-10
Desk	metal				x			7880R-11
Table	metal				x			7880R-11
Hutch	wood				x			7880R-11
File Cabinet	vertical, 5 dr				x			7880R-11
Bookcase	metal				x			7880R-11
Wall Calendar	plastic				x			7880R-11
File Cabinet	vertical 2 dr				x			7880R-11
Computer Table	metal				x			7880R-11
Whiteboard					x			7880R-11
Telephone		KXTS27W	OJBLC092443		x			7880R-11
Coat Hook					x			7880R-11
Desk	metal				x			7880R-12
Table	wood				x			7880R-12
Whiteboard					x			7880R-12
Task Chair					x			7880R-12
Task Chair					x			7880R-12
File Cabinet	vertical, 5 dr				x			7880R-12
Coat Hook					x			7880R-12
Telephone	Panasonic	KXTS108W	2JBFB042604		x			7880R-12
Desk	metal				x			7880R-13
File Cabinet	vertical, 4 dr				x			7880R-13
Bookcase	metal				x			7880R-13

TRU Waste Processing Center
Property Inventory
Trailer 7880R - Project Management

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Wall Clock					x		7880R-13
Whiteboard					x		7880R-13
Credenza	metal				x		7880R-13

TRU Waste Processing Center
Property Inventory
Trailer 7880U - Shipping and Receiving

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Desk	metal						7880U-1
Desk	metal						7880U-1
Bookcase	metal						7880U-1
Bookcase	metal						7880U-1
File Cabinet	vertical, 2 dr						7880U-1
File Cabinet	lateral, 5 dr						7880U-1
File Cabinet	lateral, 5 dr						7880U-1
Hutch	metal						7880U-1
Fan	floor						7880U-1
Task Chair							7880U-1
Task Chair							7880U-1
Utility Cart	metal						7880U-1
Shelf	metal						7880U-1
Refrigerator	Magic Chef, small white						7880U-1
Telephone	AT&T	1959					7880U-1

TRU Waste Processing Center
 Property Inventory
 Trailer 7880V - Document Control

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Workstation	2 work surfaces, 2 pads, no walls, 1 hatch				x		7880V-1
Table	metal, non-folding				x		7880V-1
Bookcase	wood				x		7880V-1
Task Chair					x		7880V-1
Telephone	Radio Shack, incl. cordless unit	E209700	08A044401802		x		7880V-1
Wall Clock					x		7880V-1
Storage Cabinet	metal				x		7880V-2
Folding Table					x		7880V-2
Lock Box	metal				x		7880V-2
Microwave Oven					x		7880V-2
Bookcase					x		7880V-3
Bookcase					x		7880V-3
Office Supplies	hanging file folders, binder clips, paper clips, interior file folders, post-it notes, staples, dividers, CDs, CD sleeves, clasp envelopes, transparencies				x		7880V-3
Mail Sorter					x		7880V-4
Folding Table					x		7880V-4
Map File Cabinet	metal				x		7880V-4
Bookcase	metal				x		7880V-4
Bookcase	metal				x		7880V-4
Folding Chair					x		7880V-4
Folding Chair					x		7880V-4
Bookcase	wood				x		7880V-4
Bookcase	wood				x		7880V-4
File Cabinet	vertical, 2 dr				x		7880V-4
File Cabinet	vertical, 2 dr				x		7880V-4

**TRU Waste Processing Center
Property Inventory
Trailer 7880V - Document Control**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet	Lateral, 5 dr				x			7880V-4
File Cabinet (5 lots)	Lateral, 4 dr				x			7880V-4
File Cabinet	Lateral, 4 dr				x			7880V-4
File Cabinet	Lateral, 4 dr				x			7880V-4
File Cabinet	Lateral, 4 dr				x			7880V-4
File Cabinet	Lateral, 4 dr				x			7880V-4

TRU Waste Processing Center
 Property Inventory
 Trailer 7880W - Engineering

Item	Description	Model #	Serial #	Condition			Location
				New-Unused	In Use	Repairs Required	
Task Chair				x			7880W-2
Task Chair				x			7880W-2
Task Chair				x			7880W-2
Folding Table				x			7880W-2
Chalkboard				x			7880W-2
File Cabinet	vertical, 5 dr			x			7880W-2
File Cabinet	vertical, 4 dr			x			7880W-2
File Cabinet	vertical, 2 dr			x			7880W-2
File Cabinet	lateral, 4 dr			x			7880W-2
Bookcase	metal			x			7880W-2
Workstation	3 work surfaces, 2 pedestals, 1 shelf, walls			x			7880W-3
Workstation	3 work surfaces, 2 pedestals, 1 shelf, walls			x			7880W-3
Workstation	3 work surfaces, 2 pedestals, 1 shelf, walls			x			7880W-3
Workstation	3 work surfaces, 2 pedestals, 1 shelf, walls			x			7880W-3
Bookcase	wood						7880W-3
Bookcase	wood						7880W-3
Bookcase	metal						7880W-3
Bookcase	metal						7880W-3
Folding Table							7880W-3
Printer Stand							7880W-3
Task Chair							7880W-3
Task Chair							7880W-3
Task Chair							7880W-3
Task Chair							7880W-3
Task Chair							7880W-3
File Cabinet	vertical, 2 dr						7880W-3

TRU Waste Processing Center
 Property Inventory
 Trailer 7880W - Engineering

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
File Cabinet	vertical, 5 dr							7880W-3
File Cabinet	lateral, 4 dr							7880W-3
File Cabinet	vertical, 4 dr							7880W-3
File Cabinet	vertical, 6 dr							7880W-3
Side Chair								7880W-3
Whiteboard								7880W-3
Speaker								7880W-3
Refrigerator		TAX2SNCBBL	SZ401814					7880W-3

**TRU Waste Processing Center
Property Inventory
Trailer 7880Y - General Management**

Item	Description	Model #	Serial #	Condition				Location
				New-Unused	In Use	Repairs Required	Scrap	
Desk	wood				x			7880Y-1
Task Chair					x			7880Y-1
Side Chair					x			7880Y-1
Side Chair					x			7880Y-1
Side Chair					x			7880Y-1
Computer Table	wood				x			7880Y-1
Credenza	wood				x			7880Y-1
Bookcase	wood				x			7880Y-1
Bookcase	wood				x			7880Y-1
Whiteboard					x			7880Y-1
Whiteboard					x			7880Y-1
Telephone	AT&T	959			x			7880Y-1
Coat Hook	metal, 4 hook				x			7880Y-1
Wall Clock					x			7880Y-1
Desk	wood				x			7880Y-2
Desk	wood				x			7880Y-2
Credenza	wood				x			7880Y-2
Task Chair					x			7880Y-2
Task Chair					x			7880Y-2
Task Chair					x			7880Y-2
Bookcase	wood				x			7880Y-2
Telephone	Uniden	CXA15198, EDX510	AG20486580		x			7880Y-2
Telephone	AT&T	959			x			7880Y-2
Wall Clock					x			7880Y-2
Coat Hook					x			7880Y-2
Desk	wood				x			7880Y-3
Computer Table	wood				x			7880Y-3
Bookcase	wood				x			7880Y-3

TRU Waste Processing Center
 Property Inventory
 Traller 7880Y - General Management

Item	Description	Model #	Serial #	Condition			Location
				New/Unused	In Use	Repairs Required	
Bookcase	metal				x		7880Y-7
Bookcase	metal				x		7880Y-7
File Cabinet	5 dr lateral				x		7880Y-7
Printer Stand	metal				x		7880Y-7
Fan	table, circular				x		7880Y-7
Wall Clock					x		7880Y-7
Coat Hook	metal, 4 hook				x		7880Y-7
Telephone	AT&T	959			x		7880Y-7
Desk	wood				x		7880Y-8
Table	wood, 36" round conference				x		7880Y-8
Credenza	wood				x		7880Y-8
Conference Chair					x		7880Y-8
Conference Chair					x		7880Y-8
Conference Chair					x		7880Y-8
Conference Chair					x		7880Y-8
File Cabinet	2 dr vertical				x		7880Y-8
Whiteboard					x		7880Y-8
Task Chair					x		7880Y-8
Coat Hook	metal, 4 hook				x		7880Y-8
Table	folding				x		7880Y-8
Table	folding				x		7880Y-9
Table	folding				x		7880Y-9
Desk	wood				x		7880Y-9
File Cabinet	4 dr vertical				x		7880Y-9
File Cabinet	4 dr vertical				x		7880Y-9
Bookcase	wood				x		7880Y-9
Task Chair					x		7880Y-9
Telephone	AT&T	959			x		7880Y-9

**TRU Waste Processing Center
Property Inventory
Trailer 7880Y - General Management**

Item	Description	Model #	Serial #	Condition				Location
				New/Unused	In Use	Repairs Required	Scrap	
Telephone	AT&T	859			x			7880Y-9
Fan	table, circular				x			7880Y-9
Coat Hook	metal, 4 hook				x			7880Y-9
Wall Clock					x			7880Y-9
Desk	metal				x			7880Y-10
Task Chair					x			7880Y-10
Side Chair					x			7880Y-10
Bookcase	wood				x			7880Y-10
Printer Stand	wood				x			7880Y-10
File Cabinet	2 dr vertical				x			7880Y-10
Whiteboard					x			7880Y-10
Desk	wood				x			7880Y-11
Credenza	wood				x			7880Y-11
Table	wood, 42" round				x			7880Y-11
Conference Chair					x			7880Y-11
Conference Chair					x			7880Y-11
Conference Chair					x			7880Y-11
Conference Chair					x			7880Y-11
Task Chair					x			7880Y-11
Bookcase	wood				x			7880Y-11
Whiteboard					x			7880Y-11
Wall Clock					x			7880Y-11
Telephone	Uniden	CXA15198, EDX510	AG20466579		x			7880Y-11
Coat Hook					x			7880Y-11
Coat Hook					x			7880Y-11
Workstation	3 work surfaces, 1 hutch, 2 peds	Invincible			x			7880Y-12
Storage Cabinet	metal				x			7880Y-12
File Cabinet	2 dr vertical				x			7880Y-12

TRU Waste Processing Center
 Property Inventory
 Trailer 7880Y - General Management

Item	Description	Model #	Serial #	Condition			Location
				New/Unused	In Use	Repairs Required	
Workstation Pedestal	metal				X		7880Y-12
File Cabinet	4 dr lateral				X		7880Y-12
Computer Monitor	View Sonic				X		7880Y-12
Computer Hard Drive	HP Compaq				X		7880Y-12
Printer	HP LJ 8000 DN				X		7880Y-12
Telephone	AT&T	959			X		7880Y-12
Side Chair					X		7880Y-12
Microwave Oven	Sunbeam	SBM700W	4077A53836		X		7880Y-12
Task Chair					X		7880Y-12
File Cabinet	2 dr vertical				X		7880Y-12
File Cabinet	4 dr vertical fire-proof	Fire King	FL2003029217		X		7880Y-12
File Cabinet (3 total)	5 dr lateral				X		7880Y-13
File Cabinet	5 dr lateral				X		7880Y-13
File Cabinet	5 dr lateral				X		7880Y-13
File Cabinet (8 total)	5 dr vertical				X		7880Y-13
File Cabinet	5 dr vertical				X		7880Y-13
File Cabinet	5 dr vertical				X		7880Y-13
File Cabinet	5 dr vertical				X		7880Y-13
File Cabinet	5 dr vertical				X		7880Y-13
File Cabinet	5 dr vertical				X		7880Y-13
File Cabinet	5 dr vertical				X		7880Y-13
File Cabinet (9 total)	4 dr vertical fire-proof	Fire King	FL2005271089		X		7880Y-14
File Cabinet	4 dr vertical fire-proof	Fire King	FL2005271048		X		7880Y-14
File Cabinet	4 dr vertical fire-proof	Fire King	FL2006012240		X		7880Y-14
File Cabinet	4 dr vertical fire-proof (training)	Fire King	FL2009037159		X		7880Y-14
File Cabinet	4 dr vertical fire-proof (training)	Fire King	FL2009080004		X		7880Y-14
File Cabinet	4 dr vertical fire-proof	Fire King	FL20093303185		X		7880Y-14

**TRU Waste Processing Center
Property Inventory
Trailer 7880Y - General Management**

Item	Description	Model #	Serial #	Condition				Location
				New/Unused	In Use	Repairs Required	Scrap	
File Cabinet	4 dr vertical fire-proof	Fire King	FL2006270188		x			7880Y-14
File Cabinet	4 dr vertical fire-proof	Fire King	FL2005298054		x			7880Y-14
File Cabinet	4 dr vertical fire-proof				x			7880Y-14
Bookcase	metal				x			7880Y-14
VCR	RCA	DRCR31NC	602200275		x			7880Y-14
VCR Reel Converter					x			7880Y-14
Lock Box	metal, w/key				x			7880Y-14
File Cabinet	4 dr lateral				x			7880Y-14
File Cabinet	4 dr lateral				x			7880Y-14
Conference Room Table	wood, 12 ft.				x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Conference Room Chair					x			7880Y-15
Desk	metal				x			7880Y-15
Side Chair					x			7880Y-15
Side Chair					x			7880Y-15
Projection Screen					x			7880Y-15
Whiteboard					x			7880Y-15
Whiteboard					x			7880Y-15

TRU Waste Processing Center
 Property Inventory
 Trailer 7880Y - General Management

Item	Description	Model #	Serial #	Condition			Location
				New/Unused	In Use	Repairs Required	
Whiteboard					x		7880Y-15
Whiteboard					x		7880Y-15
Wall Clock					x		7880Y-15
Speakerphone	Polycorn Sound Station 2W		G204390071837		x		7880Y-15
Speaker	located in hallway				x		7880Y
Speaker	located in hallway				x		7880Y
Speaker	located in hallway				x		7880Y
Speaker	located in hallway				x		7880Y

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

This draft list requires finalization and assessment of impact during the transition period of 60 days with implementation for compliance completed within 120 days from the execution of the Final Conversion Modification.

DOE O 151.1C	Comprehensive Emergency Management System
DOE N 206.3	Personal Identity Verification
DOE N 221.1, Attachment 1	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE O 221.2, Attachment 1	Cooperation with the Office of Inspector General
DOE N 221.11	Reporting Fraud, Waste, and Abuse
DOE O 225.1A	Accident Investigation
DOE O 226.1	Implementation of Department of Energy Oversight Policy
DOE M 231.1-1A, Change 1	Environment, Safety, and Health Reporting Manual
DOE M 231.1-2	Occurrence Reporting and Processing of Operations Information
DOE O 243.1	Records Management Program
DOE O 243.2	Vital Records
DOE O 251.1B, Attachment 1	Directives System
DOE M 251.1-1A	Directives System Manual
DOE O 252.1, Attachment 1	Technical Standards Program
DOE O 350.1, Change 1, Attachment 1 For Chapters I – IX	Contractor Human Resource Management Programs
DOE O 413.1A, Attachment 2	Management Control Program
DOE O 413.3A, Attachment 2	Program and Project Management for Acquisition of Capital Assets
DOE O 414.1C	Quality Assurance
DOE O 420.1B, Attachment 2	Facility Safety
DOE O 425.1C	Startup and Restart of Nuclear Facilities

DOE O 430.1B	Real Property Asset Management
DOE O 433.1	Maintenance Management Program for DOE Nuclear Facilities
DOE O 435.1, Change 1	Radioactive Waste Management
DOE M 435.1-1, Change 1	Radioactive Waste Management Manual
DOE O 440.1A	Work Protection Management for DOE Federal and Contractor Employees
DOE P 450.4	Safety Management System Policy
DOE O 450.1, Change 2	Environmental Protection Program
DOE O 451.1B, Change 1	National Environmental Policy Act Compliance Program
DOE O 460.1B	Packaging and Transportation Safety
DOE O 460.2A	Departmental Materials Transportation and Packaging Management
DOE M 460.2-1	Radioactive Material Transportation Practices
DOE O 470.2B	Independent Oversight and Performance Assurance Program
DOE O 471.3	Identifying and Protecting Official Use Only Information
DOE M 471.3-1	Manual for Identifying and Protecting Official Use Only Information
DOE O 534.1B, Attachment 1	Accounting
DOE O 551.1B, Attachment 2	Official Foreign Travel
DOE O 580.1, Attachment 2	DOE Personal Property Management Program
DOE O 2340.1C	Coordination of General Accounting Office Activities
DOE O 5400.5, Change 2	Radiation Protection of the Public and the Environment
DOE O 5480.4, Change 4	Environmental Protection, Safety, and Health Protection Standards
DOE O 5480.19, Change 2	Conduct of Operations Requirements for DOE Facilities
DOE O 5480.20A, Revision A, Change 1	Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities
DOE-STD-1186-2004	Specific Administrative Controls
ORO O 150, Chapter I, Change 5	Comprehensive Emergency Management System
ORO O 250, Chapter I, Change 5 Attachment 1	ORO Standards Management Program Overview

ORO O 250, Chapter II, Change 6 Attachment 1	Oak Ridge Operations Directives System
ORO O 250, Chapter IV, Change 4 Attachment 1	Impact Assessments
ORO O 250, Chapter V, Change 6 Attachment 1	Development, Approval and Maintenance of Work Smart Standards Sets
ORO O 250, Chapter VI, Change 5 Attachment 1	Implementation Plans & Exemption Requests
ORO O 250, Chapter VII, Change 4 Attachment 1	Maintenance of Standards/Requirements Identification Documents
ORO O 250, Chapter VIII, Change 2 Attachment 1	Requirements Change Notices
ORO O 250, Chapter X, Change 1	DOE Directives System
ORO O 360, Chapter II, Change 5	Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities
ORO O 420, Chapter XI, Change 1 Attachment 1	Authorization Agreements
ORO O 440, Chapter I, Change 2 Attachment 1	Worker Protection Management for DOE Federal and Contractor Employees
ORO O 440, Chapter IV, Change 5 Attachment 1	Radiation Protection of the Public and the Environment
ORO O 440, Chapter V, Change 4 Attachment 1	Employee Concerns Management System
ORO O 440, Chapter VI, Change 5 Attachment 1	Radiological Protection for DOE Activities
ORO O 450, Chapter 1, Change 5 Attachment 1	General Environmental Protection Program
ORO O 530, Chapter III, Change 5 Attachment 1	Accounting
ORO O 550, Chapter II, Change 1 Attachment 1	Foreign Travel Authorization

SUPPORTING REPORT OF COST AND FEE

See attached example format for the preparation of the Supporting Reports of Cost and Fee.

Final required format including further breakdown of costs will be established upon award.

- (1) The Contractor, making due allowances for the Contractor's cost accounting and project management systems, shall complete the Supporting Report(s) of Cost and Fee.
- (2) The Contractor shall complete the Report(s) of Cost and Fee for each assignment supporting the total invoiced cost.
- (3) Costs claimed must be only those recorded costs authorized for billing by the provisions of the contract and supported by the Contractor's cost accounting system.
- (4) A separate line item should be identified for claimed overtime cost by each assignment.
- (5) The funds expended for the current billing period as well as for the cumulative contract period will be shown.
- (6) The certification statement, signed by a responsible official of the Contractor, will be placed at the bottom of the report(s) of cost and fee and appear as follows:

CERTIFICATION: I certify that this invoice is correct, was prepared in accordance with the terms of the contract and is supported by the Contractor's cost accounting system. The costs included herein have been incurred; represent payments made by the contractor except as otherwise authorized in the payments provisions of the contract; and properly reflect the level of effort required by DOE.

Signature Title

Name of Preparer Telephone Number

Company Address

- (7) Additional supporting data for claimed costs shall be provided in such form and reasonable detail as an authorized representative of the Contracting Officer may require.

EXAMPLE
Voucher/Invoice Supporting Report of Cost and Fee
For the Period MM/DD/YY through MM/DD/YY

Firm Name: Foster Wheeler Environmental Corporation

Firm Street Address: _____ B&R #: _____ Contract No.: DE-AC05-98OR22516

Firm City, State, Zip Code: _____ Cost Center #: _____ Voucher No.: _____

Taxpayer Identification # (TIN): _____ ADS #: _____ Through Modification: _____

COST ELEMENT	APPLIED RATE		CLAIMED AOUNT THIS BILL	CUMULATIVE COST/FEE TO DATE
Labor				
Fringe Benefits	0.00%			
Labor Overhead	0.00%			
Subcontracts				
Materials				
Material Overhead	0.00%			
Equipment				
Other Direct Costs (ODC)				
G&A Expenses	0.00%			
Total Cost			\$0.00	\$0.00
Fee			\$0.00	\$0.00
Total Invoice			\$0.00	\$0.00

AMOUNT AUTHORIZED FOR EXPENDUITURE (OBLIGATION):	
Basic Contract	\$0.00
All Modifications	\$0.00
Contract To Date	\$0.00

CERTIFICATION: I certify that this invoice is correct, was prepared in accordance with the terms of the contract and is supported by the Contractor's cost accounting system. The costs included herein have been incurred; represent payments made by the contractor except as otherwise authorized in the payments provisions of the contract; and properly the level of effort required by DOE.

Signature _____ Title _____

Name of Preparer _____ Telephone Number _____

Company _____ Address _____

94-2493 TN, KNOXVILLE

Attachment E

WAGE DETERMINATION NO: 94-2493 REV (23) AREA: TN, KNOXVILLE

HEALTH AND WELFARE LEVEL - INSURANCE ONLY **OTHER WELFARE LEVEL WD:94-2494

REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON D.C. 20210

William W. Gross Division of
Director Wage Determinations

Wage Determination No.: 1994-2493
Revision No.: 23
Date Of Revision: 05/23/2006

State: Tennessee

Area: Tennessee Counties of Anderson, Blount, Campbell, Claiborne, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Knox, Loudon, Monroe, Morgan, Pickett, Roane, Scott, Sevier, Union

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION CODE - TITLE	MINIMUM WAGE RATE
01000 - Administrative Support and Clerical Occupations	
01011 - Accounting Clerk I	10.05
01012 - Accounting Clerk II	10.98
01013 - Accounting Clerk III	11.93
01014 - Accounting Clerk IV	13.34
01030 - Court Reporter	14.83
01050 - Dispatcher, Motor Vehicle	14.43
01060 - Document Preparation Clerk	11.52
01070 - Messenger (Courier)	9.04
01090 - Duplicating Machine Operator	11.52
01110 - Film/Tape Librarian	10.62
01115 - General Clerk I	8.20
01116 - General Clerk II	9.74
01117 - General Clerk III	11.85
01118 - General Clerk IV	13.29
01120 - Housing Referral Assistant	16.42
01131 - Key Entry Operator I	10.13
01132 - Key Entry Operator II	13.19
01191 - Order Clerk I	9.75
01192 - Order Clerk II	13.65
01261 - Personnel Assistant (Employment) I	9.51
01262 - Personnel Assistant (Employment) II	11.29
01263 - Personnel Assistant (Employment) III	13.73
01264 - Personnel Assistant (Employment) IV	15.42
01270 - Production Control Clerk	16.26
01290 - Rental Clerk	10.62
01300 - Scheduler, Maintenance	13.36
01311 - Secretary I	13.36
01312 - Secretary II	14.83
01313 - Secretary III	16.42
01314 - Secretary IV	18.28

01315 - Secretary V	20.22
01320 - Service Order Dispatcher	14.26
01341 - Stenographer I	12.74
01342 - Stenographer II	14.33
01400 - Supply Technician	18.28
01420 - Survey Worker (Interviewer)	12.40
01460 - Switchboard Operator-Receptionist	11.50
01510 - Test Examiner	14.61
01520 - Test Proctor	14.61
01531 - Travel Clerk I	10.76
01532 - Travel Clerk II	11.46
01533 - Travel Clerk III	12.33
01611 - Word Processor I	11.15
01612 - Word Processor II	12.38
01613 - Word Processor III	14.74
03000 - Automatic Data Processing Occupations	
03010 - Computer Data Librarian	11.40
03041 - Computer Operator I	12.28
03042 - Computer Operator II	13.73
03043 - Computer Operator III	16.63
03044 - Computer Operator IV	17.95
03045 - Computer Operator V	19.87
03071 - Computer Programmer I (1)	18.73
03072 - Computer Programmer II (1)	23.22
03073 - Computer Programmer III (1)	25.01
03074 - Computer Programmer IV (1)	27.62
03101 - Computer Systems Analyst I (1)	25.84
03102 - Computer Systems Analyst II (1)	27.62
03103 - Computer Systems Analyst III (1)	27.62
03160 - Peripheral Equipment Operator	12.28
05000 - Automotive Service Occupations	
05005 - Automotive Body Repairer, Fiberglass	17.56
05010 - Automotive Glass Installer	13.35
05040 - Automotive Worker	13.35
05070 - Electrician, Automotive	14.03
05100 - Mobile Equipment Servicer	11.97
05130 - Motor Equipment Metal Mechanic	14.69
05160 - Motor Equipment Metal Worker	13.35
05190 - Motor Vehicle Mechanic	14.48
05220 - Motor Vehicle Mechanic Helper	11.43
05250 - Motor Vehicle Upholstery Worker	12.66
05280 - Motor Vehicle Wrecker	13.35
05310 - Painter, Automotive	15.91
05340 - Radiator Repair Specialist	13.35
05370 - Tire Repairer	10.86
05400 - Transmission Repair Specialist	14.48
07000 - Food Preparation and Service Occupations	
(not set) - Food Service Worker	8.38
07010 - Baker	10.96
07041 - Cook I	9.46
07042 - Cook II	10.55
07070 - Dishwasher	7.80
07130 - Meat Cutter	12.42
07250 - Waiter/Waitress	7.79
09000 - Furniture Maintenance and Repair Occupations	
09010 - Electrostatic Spray Painter	15.48
09040 - Furniture Handler	10.90
09070 - Furniture Refinisher	15.48
09100 - Furniture Refinisher Helper	12.42
09110 - Furniture Repairer, Minor	13.93

09130 - Upholsterer	15.48
11030 - General Services and Support Occupations	
11030 - Cleaner, Vehicles	8.43
11060 - Elevator Operator	8.70
11090 - Gardener	11.57
11121 - House Keeping Aid I	7.75
11122 - House Keeping Aid II	8.89
11150 - Janitor	10.15
11210 - Laborer, Grounds Maintenance	9.53
11240 - Maid or Houseman	7.75
11270 - Pest Controller	13.16
11300 - Refuse Collector	11.58
11330 - Tractor Operator	12.24
11360 - Window Cleaner	10.60
12000 - Health Occupations	
12020 - Dental Assistant	12.02
12040 - Emergency Medical Technician (EMT)/Paramedic/Ambulance Driver	13.22
12071 - Licensed Practical Nurse I	11.67
12072 - Licensed Practical Nurse II	13.07
12073 - Licensed Practical Nurse III	14.64
12100 - Medical Assistant	11.33
12130 - Medical Laboratory Technician	12.23
12160 - Medical Record Clerk	9.77
12190 - Medical Record Technician	13.54
12221 - Nursing Assistant I	8.15
12222 - Nursing Assistant II	9.06
12223 - Nursing Assistant III	9.99
12224 - Nursing Assistant IV	11.22
12250 - Pharmacy Technician	12.19
12280 - Phlebotomist	11.36
12311 - Registered Nurse I	19.16
12312 - Registered Nurse II	23.46
12313 - Registered Nurse II, Specialist	23.46
12314 - Registered Nurse III	26.04
12315 - Registered Nurse III, Anesthetist	26.04
12316 - Registered Nurse IV	30.91
13000 - Information and Arts Occupations	
13002 - Audiovisual Librarian	18.37
13011 - Exhibits Specialist I	15.73
13012 - Exhibits Specialist II	19.86
13013 - Exhibits Specialist III	25.22
13041 - Illustrator I	15.13
13042 - Illustrator II	19.86
13043 - Illustrator III	25.22
13047 - Librarian	20.94
13050 - Library Technician	10.78
13071 - Photographer I	11.91
13072 - Photographer II	15.73
13073 - Photographer III	19.86
13074 - Photographer IV	25.55
13075 - Photographer V	30.07
15000 - Laundry, Dry Cleaning, Pressing and Related Occupations	
15010 - Assembler	7.75
15030 - Counter Attendant	7.75
15040 - Dry Cleaner	10.12
15070 - Finisher, Flatwork, Machine	7.75
15090 - Presser, Hand	7.75
15100 - Presser, Machine, Drycleaning	7.75
15130 - Presser, Machine, Shirts	7.75
15160 - Presser, Machine, Wearing Apparel, Laundry	7.75

15190 - Sewing Machine Operator	10.82
15220 - Tailor	11.52
15250 - Washer, Machine	8.57
19000 - Machine Tool Operation and Repair Occupations	
19010 - Machine-Tool Operator (Toolroom)	15.31
19040 - Tool and Die Maker	18.29
21000 - Material Handling and Packing Occupations	
21010 - Fuel Distribution System Operator	14.46
21020 - Material Coordinator	14.86
21030 - Material Expediter	14.86
21040 - Material Handling Laborer	11.28
21050 - Order Filler	10.28
21071 - Forklift Operator	12.52
21080 - Production Line Worker (Food Processing)	12.52
21100 - Shipping/Receiving Clerk	12.47
21130 - Shipping Packer	12.47
21140 - Store Worker I	10.08
21150 - Stock Clerk (Shelf Stocker; Store Worker II)	13.63
21210 - Tools and Parts Attendant	12.52
21400 - Warehouse Specialist	12.52
23000 - Mechanics and Maintenance and Repair Occupations	
23010 - Aircraft Mechanic	20.28
23040 - Aircraft Mechanic Helper	15.20
23050 - Aircraft Quality Control Inspector	20.72
23060 - Aircraft Servicer	17.05
23070 - Aircraft Worker	18.03
23100 - Appliance Mechanic	15.48
23120 - Bicycle Repairer	12.77
23125 - Cable Splicer	17.84
23130 - Carpenter, Maintenance	15.48
23140 - Carpet Layer	14.73
23160 - Electrician, Maintenance	18.72
23181 - Electronics Technician, Maintenance I	16.95
23182 - Electronics Technician, Maintenance II	17.82
23183 - Electronics Technician, Maintenance III	18.65
23260 - Fabric Worker	15.32
23290 - Fire Alarm System Mechanic	16.22
23310 - Fire Extinguisher Repairer	13.56
23340 - Fuel Distribution System Mechanic	17.74
23370 - General Maintenance Worker	14.74
23400 - Heating, Refrigeration and Air Conditioning Mechanic	16.22
23430 - Heavy Equipment Mechanic	16.22
23440 - Heavy Equipment Operator	13.97
23460 - Instrument Mechanic	20.52
23470 - Laborer	10.73
23500 - Locksmith	15.48
23530 - Machinery Maintenance Mechanic	19.19
23550 - Machinist, Maintenance	17.86
23580 - Maintenance Trades Helper	12.42
23640 - Millwright	16.60
23700 - Office Appliance Repairer	15.48
23740 - Painter, Aircraft	18.16
23760 - Painter, Maintenance	15.48
23790 - Pipefitter, Maintenance	17.01
23800 - Plumber, Maintenance	16.23
23820 - Pneudraulic Systems Mechanic	16.22
23850 - Rigger	16.95
23870 - Scale Mechanic	14.74
23890 - Sheet-Metal Worker, Maintenance	16.22
23910 - Small Engine Mechanic	14.74

23930 - Telecommunication Mechanic I	17.91
23931 - Telecommunication Mechanic II	18.72
23950 - Telephone Lineman	17.91
23960 - Welder, Combination, Maintenance	16.22
23965 - Well Driller	16.22
23970 - Woodcraft Worker	16.22
23980 - Woodworker	13.22
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	8.66
24580 - Child Care Center Clerk	10.78
24600 - Chore Aid	8.51
24630 - Homemaker	13.40
25000 - Plant and System Operation Occupations	
25010 - Boiler Tender	18.21
25040 - Sewage Plant Operator	17.52
25070 - Stationary Engineer	18.21
25190 - Ventilation Equipment Tender	12.61
25210 - Water Treatment Plant Operator	19.10
27000 - Protective Service Occupations	
(not set) - Police Officer	16.22
27004 - Alarm Monitor	13.60
27006 - Corrections Officer	13.60
27010 - Court Security Officer	14.38
27040 - Detention Officer	13.60
27070 - Firefighter	13.29
27101 - Guard I	9.14
27102 - Guard II	11.51
28000 - Stevedoring/Longshoremen Occupations	
28010 - Blocker and Bracer	14.40
28020 - Hatch Tender	14.40
28030 - Line Handler	14.40
28040 - Stevedore I	13.02
28050 - Stevedore II	14.44
29000 - Technical Occupations	
21150 - Graphic Artist	17.05
29010 - Air Traffic Control Specialist, Center (2)	31.49
29011 - Air Traffic Control Specialist, Station (2)	21.71
29012 - Air Traffic Control Specialist, Terminal (2)	23.92
29023 - Archeological Technician I	15.55
29024 - Archeological Technician II	17.39
29025 - Archeological Technician III	21.52
29030 - Cartographic Technician	23.50
29035 - Computer Based Training (CBT) Specialist/ Instructor	25.84
29040 - Civil Engineering Technician	18.74
29061 - Drafter I	11.77
29062 - Drafter II	13.21
29063 - Drafter III	17.37
29064 - Drafter IV	21.52
29081 - Engineering Technician I	14.20
29082 - Engineering Technician II	15.93
29083 - Engineering Technician III	19.58
29084 - Engineering Technician IV	23.44
29085 - Engineering Technician V	25.44
29086 - Engineering Technician VI	30.80
29090 - Environmental Technician	18.02
29100 - Flight Simulator/Instructor (Pilot)	27.62
29160 - Instructor	20.80
29210 - Laboratory Technician	15.86
29240 - Mathematical Technician	16.20
29361 - Paralegal/Legal Assistant I	15.31

29362 - Paralegal/Legal Assistant II	17.03
29363 - Paralegal/Legal Assistant III	20.78
29364 - Paralegal/Legal Assistant IV	25.20
29390 - Photooptics Technician	18.85
29480 - Technical Writer	23.31
29491 - Unexploded Ordnance (UXO) Technician I	20.02
29492 - Unexploded Ordnance (UXO) Technician II	24.22
29493 - Unexploded Ordnance (UXO) Technician III	29.03
29494 - Unexploded (UXO) Safety Escort	20.02
29495 - Unexploded (UXO) Sweep Personnel	20.02
29620 - Weather Observer, Senior (3)	16.52
29621 - Weather Observer, Combined Upper Air and Surface Programs (3)	14.86
29622 - Weather Observer, Upper Air (3)	14.86
31000 - Transportation/ Mobile Equipment Operation Occupations	
31030 - Bus Driver	12.73
31260 - Parking and Lot Attendant	7.86
31290 - Shuttle Bus Driver	13.62
31300 - Taxi Driver	8.96
31361 - Truckdriver, Light Truck	14.21
31362 - Truckdriver, Medium Truck	15.01
31363 - Truckdriver, Heavy Truck	16.24
31364 - Truckdriver, Tractor-Trailer	16.24
99000 - Miscellaneous Occupations	
99020 - Animal Caretaker	9.21
99030 - Cashier	8.32
99041 - Carnival Equipment Operator	10.21
99042 - Carnival Equipment Repairer	10.88
99043 - Carnival Worker	8.11
99050 - Desk Clerk	9.16
99095 - Embalmer	20.53
99300 - Lifeguard	10.52
99310 - Mortician	23.06
99350 - Park Attendant (Aide)	13.21
99400 - Photofinishing Worker (Photo Lab Tech., Darkroom Tech)	10.04
99500 - Recreation Specialist	12.45
99510 - Recycling Worker	14.60
99610 - Sales Clerk	10.67
99620 - School Crossing Guard (Crosswalk Attendant)	9.81
99630 - Sport Official	10.52
99658 - Survey Party Chief (Chief of Party)	16.28
99659 - Surveying Technician (Instr. Person/Surveyor Asst./Instr.)	14.80
99660 - Surveying Aide	10.79
99690 - Swimming Pool Operator	13.39
99720 - Vending Machine Attendant	11.28
99730 - Vending Machine Repairer	13.39
99740 - Vending Machine Repairer Helper	11.28

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.01 per hour or \$120.40 per week or \$521.73 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

- 1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)
- 2) APPLICABLE TO AIR TRAFFIC CONTROLLERS ONLY - NIGHT DIFFERENTIAL: An employee is entitled to pay for all work performed between the hours of 6:00 P.M. and 6:00 A.M. at the rate of basic pay plus a night pay differential amounting to 10 percent of the rate of basic pay.
- 3) WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an

adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

** NOTES APPLYING TO THIS WAGE DETERMINATION **

Under the policy and guidance contained in All Agency Memorandum No. 159, the Wage and Hour Division does not recognize, for section 4(c) purposes, prospective wage rates and fringe benefit provisions that are effective only upon such contingencies as "approval of Wage and Hour, issuance of a wage determination, incorporation of the wage determination in the contract, adjusting the contract price, etc." (The relevant CBA section) in the collective bargaining agreement between (the parties) contains contingency language that Wage and Hour does not recognize as reflecting "arm's length negotiation" under section 4(c) of the Act and 29 C.F.R. 5.11(a) of the regulations. This wage determination therefore reflects the actual CBA wage rates and fringe benefits paid under the predecessor contract.

Source of Occupational Title and Descriptions:

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations," Fourth Edition, January 1993, as amended by the Third Supplement, dated March 1997, unless otherwise indicated. This publication may be obtained from the Superintendent of Documents, at 202-783-3238, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of specific job descriptions may also be obtained from the appropriate contracting officer.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE (Standard Form 1444 (SF 1444))

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. (See Section 4.6 (C) (vi)) When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation) and computes a proposed rate).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title), a Federal grade equivalency (FGE) for each proposed classification), job description), and rationale for proposed wage rate), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.