

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING	PAGE OF PAGES 1 260
2. CONTRACT (Proc. Inst. Cont.) NO. DE-AM26-99FT40575		3. EFFECTIVE DATE JUNE 1, 1999		4. REQUISITION/PURCHASE REQUEST PROJECT NO. 26-99FT40465.000	
5. ISSUED BY U.S. Department of Energy Federal Energy Technology Center P.O. Box 10940, MS 921-143 Pittsburgh, PA 15236		6. ADMINISTERED BY (If other than Item 5)		CODE	

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State, and ZIP Code) Energy and Environmental Solutions, LLC 900 Clopper Road, Suite 200 Gaithersburg, MD 20878-1360		8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)	
		9. DISCOUNT FOR PROMPT PAYMENT N/A	
		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN:	ITEM See Part I, Section G, Article G.2

CODE	FACILITY CODE
11. SHIP TO/MARK FOR See Part I, Section D	12. PAYMENT WILL BE MADE BY U.S. Department of Energy Oak Ridge Financial Services Center P.O. Box 4787 Oak Ridge, TN 37831

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)	14. ACCOUNTING AND APPROPRIATION DATA N/A
---	--

15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
1.	Program, Product and Project Engineering and Analysis (P3EA) Services for the Federal Energy Technology Center in accordance with the Statement of Work as implemented by Task Assignment issued pursuant to the ordering clauses in Section H.	See Part I, Section B			
2.	Reports, as prescribed in accordance with the Reporting Requirements Checklist.				

15G. TOTAL AMOUNT OF CONTRACT **\$98,137,809**

16. TABLE OF CONTENTS

SEC.	DESCRIPTION	PAGE(S)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE			PART II - CONTRACT CLAUSES		
A	SOLICITATION/CONTRACT FORM	1	I	CONTRACT CLAUSES	27-89
B	SUPPLIES OR SERVICES AND PRICES/COSTS	2-5	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.		
C	DESCRIPTION/SPECS./WORK STATEMENT	6	J	LIST OF ATTACHMENTS	90-260
D	PACKAGING AND MARKING	7	PART IV - REPRESENTATIONS AND INSTRUCTIONS		
E	INSPECTION AND ACCEPTANCE	8	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
F	DELIVERIES OR PERFORMANCE	9	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
G	CONTRACT ADMINISTRATION DATA	10-12	M	EVALUATION FACTORS FOR AWARD	
H	SPECIAL CONTRACT REQUIREMENTS	13-26			

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	18. <input checked="" type="checkbox"/> AWARD (Contractor is not required to sign this document) Your offer on Solicitation Number <u>DE-RP26-99FT40465</u> including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
--	--

19A. NAME AND TITLE OF SIGNER (Type or print) Randall A. Wotring, President	20A. NAME OF CONTRACTING OFFICER Debra E. Ball
19B. NAME OF CONTRACTOR By <u>Randall A. Wotring</u> (Signature of person authorized to sign)	19C. DATE SIGNED 5/27/99
20B. UNITED STATES OF AMERICA By <u>Debra E. Ball</u> (Signature of Contracting Officer)	20C. DATE SIGNED 5/22/99

TABLE OF CONTENTS

DE-RP26-99FT40575

SECTION A - SOLICITATION/CONTRACT FORM	1
SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS	2
B.1 SERVICES BEING PROCURED	2
B.2 TYPES OF TASK ORDERS	2
B.3 COMPENSATION - FIXED RATE TASK ORDERS	2
B.4 TOTAL ESTIMATED COST/MAXIMUM AVAILABLE PERFORMANCE AWARD FEE	3
B.5 PAYMENT OF WAGES AND FRINGE BENEFITS	3
B.6 COMPENSATION - FIXED PRICED TASK ORDERS	3
B.7 OPTIONS TO EXTEND THE TERM OF THE CONTRACT - SERVICES ITEMS 1 AND 2	3
B.8 MINIMUM AND MAXIMUM QUANTITY	4
B.9 PAYMENT OF PERFORMANCE AWARD FEE	4
B.10 DETERMINATION OF PERFORMANCE AWARD FEE EARNED	4
B.11 PERFORMANCE EVALUATION PLAN	4
B.12 DISTRIBUTION OF PERFORMANCE AWARD FEE	4
B.13 PERFORMANCE AWARD FEE LIMITATIONS	5
B.14 LIMITATION OF FUNDS	5
SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT	6
C.1 STATEMENT OF WORK	6
C.2 REPORTING REQUIREMENTS	6
SECTION D - PACKAGING AND MARKING	7
D.1 PACKAGING	7
D.2 MARKING	7
SECTION E - INSPECTION AND ACCEPTANCE	8
E.1 INSPECTION	8
E.2 ACCEPTANCE	8
SECTION F - DELIVERIES OR PERFORMANCE	9
F.1 PERIOD OF PERFORMANCE	9
F.2 PRINCIPAL PLACE OF PERFORMANCE	9
SECTION G - CONTRACT ADMINISTRATION DATA	10
G.1 CORRESPONDENCE PROCEDURES	10
G.2 SUBMISSION OF VOUCHERS/INVOICES	10
G.3 DOE PATENT COUNSEL	12
SECTION H - SPECIAL CONTRACT REQUIREMENTS	13
H.1 CONSECUTIVE NUMBERING	13
H.2 KEY PERSONNEL/PROGRAM MANAGER	13
H.3 CONFIDENTIALITY OF INFORMATION	13
H.4 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR ..	14
H.5 PREFERENCE IN HIRING	14
H.6 AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE) LEASING	14
H.7 ORDERING PROCEDURE	14
H.8 PROCEDURES FOR ISSUING TASK ORDERS	15
H.9 TECHNICAL DIRECTION	16
H.10 MODIFICATION AUTHORITY	17

H.11	GOVERNMENT PROPERTY AND DATA	17
H.12	SUBCONTRACTS	18
H.13	SERVICES OF CONSULTANTS	19
H.14	LABOR CATEGORY DESCRIPTIONS	19
H.15	FUNDING	19
H.16	PAYMENTS UNDER FIXED RATE TASK ORDERS	20
H.17	PAYMENTS UNDER FIRM FIXED PRICE TASK ORDERS	22
H.18	CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES	23
H.19	ENVIRONMENT, SAFETY, AND HEALTH – ON-SITE SERVICE CONTRACTS	23
H.20	INDEMNITY – ENVIRONMENTAL, HEALTH AND SAFETY VIOLATIONS	24
H.21	ORGANIZATIONAL CONFLICT OF INTEREST	24
H.22	52.216-18 ORDERING	25
H.23	YEAR 2000 COMPLIANCE	25
H.24	LOBBYING RESTRICTION (DEPT. OF INTERIOR AND RELATED AGENCIES, 1998)	25
H.25	LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1998)	25
H.26	INSURANCE REQUIREMENTS	25
H.27	COMMUNITY COMMITMENT	26
SECTION I - CONTRACT CLAUSES		27
I.1	52.202-1 DEFINITIONS. (OCT 1995)	27
I.2	52.203-3 GRATUITIES. (APR 1984)	28
I.3	52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)	28
I.4	52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (JUL 1995)	28
I.5	52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)	29
I.6	52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)	29
I.7	52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)	30
I.8	52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (JUN 1997)	30
I.9	52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER. (JUN 1996)	33
I.10	52.209-6 PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (JUL 1995)	34
I.11	52.215-2 AUDIT AND RECORDS - NEGOTIATION. (AUG 1996)	34
I.12	52.215-8 ORDER OF PRECEDENCE–UNIFORM CONTRACT FORMAT. (OCT 1997)	35
I.13	52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA. (OCT 1997) ..	35
I.14	52.215-12 SUBCONTRACTOR COST OR PRICING DATA. (OCT 1997)	36
I.15	52.215-15 TERMINATION OF DEFINED BENEFIT PENSION PLANS. (OCT 1997)	36
I.16	52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS. (OCT 1997)	37
I.17	52.216-22 INDEFINITE QUANTITY. (OCT 1995)	37
I.18	52.216-28 MULTIPLE AWARDS FOR ADVISORY AND ASSISTANCE SERVICES. (OCT 1995)	37
I.19	52.217-8 OPTIONS TO EXTEND SERVICES (AUG 1989)	37
I.20	52.219-8 UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS. (JUN 1997)	37

L21	52.219-9 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN. (AUG 1998) – ALTERNATE II (MAR 1996)	38
L22	52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN. (AUG 1998)	40
L23	52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)	41
L24	52.222-3 CONVICT LABOR. (AUG 1996)	41
L25	52.222-26 EQUAL OPPORTUNITY. (APR 1984)	41
L26	52.222-28 EQUAL OPPORTUNITY PREAMWARD CLEARANCE OF SUBCONTRACTS. (APR 1984)	42
L27	52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (APR 1998)	43
L28	52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS. (JUN 1998)	44
L29	52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (APR 1998)	45
L30	52.223-2 CLEAN AIR AND WATER. (APR 1984)	45
L31	52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. (JAN 1997)	46
L32	52.223-6 DRUG-FREE WORKPLACE. (JAN 1997)	47
L33	52.223-10 WASTE REDUCTION PROGRAM. (OCT 1997)	48
L34	52.223-14 TOXIC CHEMICAL RELEASE REPORTING. (OCT 1996)	48
L35	952.224-70 PAPERWORK REDUCTION ACT. (APR 1994)	49
L36	52.224-1 PRIVACY ACT NOTIFICATION. (APR 1984)	49
L37	52.224-2 PRIVACY ACT. (APR 1984)	49
L38	52.225-3 BUY AMERICAN ACT - SUPPLIES. (JAN 1994)	50
L39	52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (AUG 1998)	50
L40	52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES. (SEP 1996)	50
L41	52.227-1 AUTHORIZATION AND CONSENT. (JUL 1995)	51
L42	52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (AUG 1996)	51
L43	52.227-3 PATENT INDEMNITY. (APR 1984)	52
L44	52.227-6 ROYALTY INFORMATION. (APR 1984)	52
L45	52.227-10 FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER. (APR 1984)	52
L46	952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT. (SEP 1997) (DEVIATION)	53
L47	52.227-14 RIGHTS IN DATA - SPECIAL WORKS. (JUN 1987)	59
L48	52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION. (JAN 1997)	60
L49	52.229-3 FEDERAL, STATE, AND LOCAL TAXES. (JAN 1991)	60
L50	52.230-2 COST ACCOUNTING STANDARDS. (APR 1998)	60
L51	52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES. (APR 1998)	61
L52	52.230-4 CONSISTENCY IN COST ACCOUNTING PRACTICES. (AUG 1992)	62
L53	52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS. (APR 1996)	62
L54	52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (MAY 1997)	64
L55	52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS. (APR 1984)	64
L56	52.232-17 INTEREST. (JUN 1996)	64
L57	52.232-18 AVAILABILITY OF FUNDS. (APR 1984)	65
L58	52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986)	65
L59	52.232-25 PROMPT PAYMENT. (JUN 1997)	65
L60	52.233-1 DISPUTES. (OCT 1995)	68

1.61	52.233-3 PROTEST AFTER AWARD. (AUG 1996)	69
1.62	52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION. (APR 1984)	70
1.63	52.237-3 CONTINUITY OF SERVICES. (JAN 1991)	70
1.64	52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME. (OCT 1997)	70
1.65	52.242-1 NOTICE OF INTENT TO DISALLOW COSTS. (APR 1984)	71
1.66	52.242-13 BANKRUPTCY. (JUL 1995)	71
1.67	52.243-1 CHANGES - FIXED-PRICE. (AUG 1987) - ALTERNATE I (APR 1984)	71
1.68	52.243-3 CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS. (AUG 1987)	71
1.69	52.244-2 SUBCONTRACTS. (AUG 1998)	72
1.70	52.244-5 COMPETITION IN SUBCONTRACTING. (DEC 1996)	73
1.71	52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS. (APR 1998)	73
1.72	52.245-1 PROPERTY RECORDS. (APR 1984)	74
1.73	52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS). (DEC 1989)	74
1.74	52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS). (JAN 1986)	76
1.75	52.246-25 LIMITATION OF LIABILITY-SERVICES. (FEB 1997)	79
1.76	52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS. (JAN 1997)	79
1.77	52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS. (JUN 1997)	80
1.78	52.249-6 TERMINATION (COST-REIMBURSEMENT). (SEP 1996) - ALTERNATE V (SEP 1996)	81
1.79	52.249-14 EXCUSABLE DELAYS. (APR 1984)	83
1.80	52.251-1 GOVERNMENT SUPPLY SOURCES. (APR 1984)	84
1.81	52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES. (JAN 1991)	84
1.82	52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998)	84
1.83	52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)	84
1.84	952.204-2 SECURITY. (SEP 1997)	84
1.85	952.204-70 CLASSIFICATION/DECLASSIFICATION. (SEP 1997)	85
1.86	952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR. (APR 1984)	86
1.87	952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST. (JUN 1997)	86
1.88	952.247-70 FOREIGN TRAVEL. (FEB 1997)	88
1.89	952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS. (JUN 1995)	88
1.90	970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (JAN 1993)	89
1.91	52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)	89
	SECTION J - LIST OF ATTACHMENTS	90
	J.1 SECTION J - LIST OF ATTACHMENTS	90

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 SERVICES BEING PROCURED

The contractor shall furnish all personnel, 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 of the following items of work:

- Item 1 - Program, Product and Project Engineering and Analysis (P3EA) Services for the Federal Energy Technology Center in accordance with Statement of Work as implemented by Task Assignments issued pursuant to the ordering clauses in Section H.
- Item 2 - Reports, as prescribed in accordance with the "Reporting Requirements Checklist."

B.2 TYPES OF TASK ORDERS

(a) FIXED RATE TASK ORDERS:

Task orders may be issued to require the contractor to provide Direct Productive Labor Hours (DPLH) toward accomplishment of a specific task (or tasks), from the labor categories set forth in this contract at the firm fixed labor hour rates indicated. Other Direct Costs (ODC) and travel costs required for performance of the task order will be identified and proposed with each specific task order proposal.

The contractor shall not exceed the total estimated cost for a task order without the approval of the Contracting Officer. If the contractor reaches the total estimated cost for a task order without completing the required task, the Contracting Officer may increase the total estimated cost and require the contractor to continue work until the task is completed or the new total estimated cost is reached. Without the Contracting Officer's approval, the Government shall not reimburse the contractor for any costs incurred in excess of the total estimated cost for a task order.

(b) FIRM FIXED PRICE TASK ORDERS:

Task orders may be issued to require the contractor to complete a specific task (or tasks), for a firm fixed price. The contractor's task order proposal for firm fixed price completion task orders shall propose DPLH in accordance with the labor categories set forth in this contract. The contractor may elect to use the firm fixed labor hour rates set forth in this contract or establish different rates for proposals submitted in response to a firm fixed price completion task order. ODC and travel costs required for performance of the task order shall be included in each specific task order proposal, as well as any profit. Firm fixed price completion task orders are not subject to Clause B.10 Determination of Performance Award Fee Earned. The Government may include any specific performance incentives for firm fixed price task orders when the task order is issued or upon request of a task order proposal.

B.3 COMPENSATION - FIXED RATE TASK ORDERS

(a) Under Fixed Rate Task Orders, the contractor shall be compensated for DPLH delivered, and accepted in accordance with the terms of this contract, at the fixed hourly rates set forth in Section J, Attachment C-1, subject to the adjustment provision set forth in Clause B.5, Payment of Wages and Fringe Benefits. The rates set forth in Section J, Attachment C-1 are fully burdened fixed hourly rates excluding profit, ODC, and travel.

(b) Other direct costs and travel incurred in the performance of fixed rate task orders shall be reimbursed to the contractor at actual reasonable costs in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

B.4 TOTAL ESTIMATED COST/MAXIMUM AVAILABLE PERFORMANCE AWARD FEE

(a) The total estimated costs are as follows:

Base Period (3 years).....	\$89,623,570*
First Option Year.....	\$30,761,168*
Second Option year.....	\$31,218,228*

* = Total Estimated Labor Cost + Travel + ODCs

(b) The Maximum Available Performance Award Fees are as follows:

Base Period (3 years).....	\$ [REDACTED]
First Option Year.....	\$ [REDACTED]
Second Option Year.....	\$ [REDACTED]

B.5 PAYMENT OF WAGES AND FRINGE BENEFITS (FIXED RATE TASK ORDERS)

(a) For each one year period, the average wage and fringe benefit amount paid to employees in each labor category identified in Clause B.3, Compensation - Fixed Rate Task Orders, must be at least the amount specified for the labor category identified in Section J, Attachment C-2. If on the average the contractor pays less than the amount specified in Section J, Attachment C-2 then the Government will be entitled to a credit or refund equal to the total difference. Within ninety (90) days after completion of the contractor's and its subcontractors' fiscal years, the contractor shall report (1) Total Labor Hours billed per Labor Category, (2) Total Wages and Fringe Benefits paid per Labor Category and (3) Credit or refund due the Government, if any. The Government reserves the right to examine payroll records of the contractor to determine compliance with this provision.

(b) This provision does not authorize the contractor to pay non-exempt Service Contract Act employees at rates lower than is required by the wage determination.

(c) This provision shall flow-down to any subcontractor or team member identified in the schedules in Clause B.3, Compensation - Fixed Rate Task Orders.

(d) This provision does not apply to Firm Fixed Priced Task Orders.

B.6 COMPENSATION - FIXED PRICED TASK ORDERS

Under Fixed Priced Task Orders, the contractor shall use the labor categories set forth in Clause B.3, Compensation - Fixed Rate Task Orders, for proposal of DPLH in task order proposals. The contractor may elect to use the firm fixed hourly rates set forth in Section J, Attachment C-1 or establish different rates for proposing labor costs under firm fixed price completion task order proposals. The contractor's compensation for successful completion of a Firm Fixed Price Completion Task Order shall be the fixed price (including profit, ODC and travel) set forth in the task order and will not vary with the contractor's actual cost experience in performing the task order.

B.7 OPTIONS TO EXTEND THE TERM OF THE CONTRACT - SERVICES ITEMS 1 AND 2

(a) The Government may unilaterally extend the term of this contract by written notice to the contractor within the term of the contract, provided that the Government shall give the contractor a preliminary written notice of its intent to extend at least sixty (60) days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises any option, the extended contract shall be considered to include this option provision. The extension of the contract under any option, if exercised, shall be for an additional term of twelve (12) months.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed sixty (60) months.

B.8 MINIMUM AND MAXIMUM QUANTITY

The Government shall order a minimum of \$5,000,000 dollars in services under this contract. The Government may place orders under this contract up to the Total Estimated Cost specified in Clause B.4, Total Estimated Cost/Maximum Allowable Performance Award Fee inclusive of the cost associated with firm fixed priced orders.

B.9 PAYMENT OF PERFORMANCE AWARD FEE

The Government will promptly make payment of any award fee upon submission by the contractor to the Contracting Officer, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment shall be made based upon an authorization letter from the Fee Determination Official (FDO) and without the need for a contract modification.

B.10 DETERMINATION OF PERFORMANCE AWARD FEE EARNED

(a) The Government shall, at the conclusion of each evaluation period, evaluate the contractor's performance for a determination of award fee earned. The determination as to amount of award fee earned will be made by the Fee Determination Official (FDO). Such determination is binding and shall not be subject to appeal under the "Disputes" clause or any other clause of the contract.

(b) Evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan. The contractor shall be promptly advised in writing of the determination, and the reasons why fee was or was not earned. While the basis for determination of fee shall be the evaluation by the Government, any self-evaluation which is received within seven (7) days after the end of the period being evaluated, may be given consideration by the FDO. The contractor shall submit a self-evaluation of performance for each period under consideration.

B.11 PERFORMANCE EVALUATION PLAN

The award fee determination shall be based on a Performance Evaluation Plan. The Plan shall be unilaterally established by the Government; however, the Government may seek contractor input in development of the Plan. The Plan shall include the criteria to be considered under each area evaluated and upon award, the percentage of award fee available for each area. A copy of the Plan shall be provided to the contractor at least fifteen (15) calendar days prior to the start of the evaluation period. The Plan may be revised unilaterally by the Government. Notification of any change shall be provided to the contractor at least fifteen (15) calendar days prior to the start of the evaluation period to which the change will apply.

B.12 DISTRIBUTION OF PERFORMANCE AWARD FEE

(a) The total amount of award fee available under this contract is assigned as follows:

Three-year Base Period

Fee Period: Every six (6) months
Available Award Fee Per Fee Period: Base Period Award Fee + 6

Option Year One

Fee Period: Every six (6) months
Available Award Fee Per Fee Period : Year 1 Award Fee + 2

Option Year Two

Fee Period: Every six (6) months
Available Award Fee Per Fee Period: Year 2 Award Fee + 2

(b) In the event of contract termination, either in whole or in part, the amount of award fee available shall be a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official (FDO).

B.13 PERFORMANCE AWARD FEE LIMITATIONS

The available award fee for any given six-month evaluation period shall not exceed % of the total cost planned on fixed rate tasks during that evaluation period. Costs planned means the Contracting Officer negotiated approved cost projections for a given task order.

*equals the MAXIMUM AVAILABLE AWARD FEE divided by the TOTAL ESTIMATED COSTS
(To be completed by offeror)

B.14 LIMITATION OF FUNDS

Pursuant to FAR clause 52.232-22 entitled "Limitation of Funds" total funds in the amount of * have been obligated and are available for payment of allowable costs and fee to be incurred from the effective date of this contract through the period estimated to end *.

*To be completed by the Government at time of award.

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 STATEMENT OF WORK

The Statement of Work is located in Part III – Section J, Attachment A to this contract.

C.2 REPORTING REQUIREMENTS

Reports under this contract shall be in accordance with the Reporting Requirements set forth in Part III, Section J, Attachment B, "Reporting Requirements Checklist."

SECTION D - PACKAGING AND MARKING

D.1 PACKAGING

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

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 the premium method of delivery.

D.2 MARKING

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) All deliverables under this contract shall be titled in accordance with the Reporting Requirements Checklist located in Part III, Section J, Attachment B.
- (3) Indicates whether the contractor considers the delivered item to be a partial or full satisfaction of the requirement.

SECTION E - INSPECTION AND ACCEPTANCE

E.1 INSPECTION

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.2 ACCEPTANCE

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

SECTION F - DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE

The base period of performance (including the transition period) is thirty-six (36) months from the date of contract execution.

If the Government elects to exercise the options specified in Clause B.7, the period of performance will be extended as follows:

First Option - twelve (12) months,
Second Option - twelve (12) months,

from the effective date of exercise of the respective option.

F.2 PRINCIPAL PLACE OF PERFORMANCE

The contractor shall perform the services on-site at FETC, at a local office or home office of the contractor and/or at other off-site locations in accordance with task orders issued under this contract.

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 CORRESPONDENCE PROCEDURES

To promote timely and effective administration, correspondence (except for invoices and reports) submitted under this contract shall be subject to the following procedures:

(a) Technical Correspondence.

Technical correspondence (as used herein, this term excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions, of this contract) shall be addressed to the DOE Contracting Officer's Representative, with an information copy of the correspondence to the DOE Contract Specialist.

(b) Property Correspondence.

Property correspondence (as used herein, this term includes correspondence which addresses matters which relate to property issues which come under the contract's Government property provisions) shall be addressed to the DOE Property Administrator, with information copies of the correspondence to the DOE Contracting Officer's Representative and the DOE Contract Specialist.

(c) Correspondence on Patent or Technical Data Issues.

Correspondence concerning patent or technical data issues shall be addressed to the Intellectual Property Law Division, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Building 201, Argonne, IL 60439

Information copies of correspondence being sent to the Intellectual Property Law Division shall also be sent to the FETC Patent Attorney, the DOE Contract Specialist, and the Contracting Officer's Representative.

(d) Other Correspondence.

All other correspondence shall be addressed to the DOE Contract Specialist with information copies of the correspondence to the DOE Contracting Officer's Representative.

(e) Subject Line(s).

All correspondence shall contain a subject line commencing with the contract number, i.e., DE-AC26-99FT40575, and identifying the specific contract action requested.

G.2 SUBMISSION OF VOUCHERS/INVOICES

(a) Voucher Form (SF 1034)

In requesting reimbursement, contractors shall use Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal), and the FETC Statement of Cost. The Statement of Cost shall be supported by the information contained in Paragraph C of this clause and shall include as a minimum a breakout by line item and task and subtask order for the current billing period and cumulatively for the entire contract. Acceptable substitutes for the forms (which provide the same necessary information) may be used.

In accordance with FAR 52.232-25, "Prompt Payment," all invoices shall include the following information:

- (1) Name and address of contractor/vendor
- (2) Invoice date
- (3) Contract number or other authorization for delivery of property or services
- (4) Description, price and quantity of property and services actually delivered or rendered

- (5) Shipping and payment terms
- (6) Name (where practicable), title, phone number and complete mailing address of responsible official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)
- (7) Name (where practicable), title, phone number and complete mailing address of the person to be notified in the event of a defective invoice.
- (8) Other substantiating documentation or information as required by the contract.

(b) Statement of Cost

The SF 1034 shall be completed so as to make due allowances for the contractor's cost accounting system. The costs claimed shall be only those recorded costs (including cost sharing) which are authorized for billing by the payment provisions of this contract. If this is a cost-plus-fixed-fee contract, the amount claimed for the fixed fee should be based on a percentage of completion of the work. If this is a cost sharing contract, the "Government Share" must agree with the amount billed on the SF 1034. Any cost sharing or in-kind contributions incurred by the contractor and/or third party during the billing period must be included in the invoice and adequately supported. The Certification (block 11) must be signed by a responsible official of the contractor.

(c) Supporting Documentation

Direct costs (e.g. labor, equipment, travel, supplies, etc.) claimed for reimbursement on the Statement of Cost must be adequately supported. The level of detail provided must clearly indicate where the funds were expended. For example, support for labor costs must include the labor category (e.g. program manager, senior engineer, technician, etc.) the hourly rate, and the labor cost per category; equipment costs must be supported by a list of the equipment purchased, along with the item's cost; supporting data for travel must include the destination of the trip, number and labor category of travelers, transportation costs, per diem costs, and purpose of trip; and supplies should be categorized by the nature of the items (e.g. office, lab, computer, etc.) and the dollar amount per category.

(d) Submission of Voucher

Submit one copy of the original voucher including the certified Statement of Cost and Supporting Documentation to the following payment office:

U. S. Department of Energy
Oak Ridge Financial Services Center
P. O. Box 4787
Oak Ridge, TN 37831

In addition, submit two copies of the voucher including the certified Statement of Cost and Supporting Documentation to the following address:

U. S. Department of Energy
Federal Energy Technology Center
[Contract Specialist to be assigned at time of award]

(e) Billing Period

Vouchers shall be submitted no more frequently than monthly (unless prior written consent of the Contracting Officer for more frequent billing is obtained). The period of performance covered by vouchers should be the same as covered by any required monthly technical progress reports and/or monthly cost reports.

(f) Payment Method

In accordance with Mandatory Information for Electronic Funds Transfer Payment, payment under this contract will be made utilizing the Automated Clearing House (ACH) network. The payment system is specifically referred to as "Vendor Express."

(g) Defective Invoices

Invoices that are determined to be defective, and therefore not suitable for payment, shall be returned to the contractor as soon as practicable, specifying the reason(s) why the invoice is not proper.

G.3 DOE PATENT COUNSEL

Correspondence concerning patent or technical data issues shall be addressed to the following:

Intellectual Property Law Division
U.S. Department of Energy
Chicago Operations Office
9800 South Cass Avenue
Building 201
Argonne, IL 60439

Information copies of correspondence being sent to the Intellectual Property Law Division shall be sent to the Contracting Officer, designated COR, and the Patent Attorney at the following address:

U. S. Department of Energy
Federal Energy Technology Center
ATTN: Patent Attorney, MS-A03
P. O. Box 880
Morgantown, WV 26507-0880

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 CONSECUTIVE NUMBERING

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

H.2 KEY PERSONNEL/PROGRAM MANAGER

The key personnel, which includes the Program Manager, specified below, are considered to be essential to the work being performed under this award; moreover, any changes to these personnel require prior DOE Contracting Officer's written approval.

The Program Manager shall serve as the contractor's authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager shall receive and execute, on behalf of the contractor, such technical directions as the DOE Contracting Officer's Representative may issue within the terms and conditions of the contract.

The following is a list of key personnel that have been approved for this contract:

<u>Name</u>	<u>Position</u>
	Program Manager
	Project Support Manager
	Product Support Manager
	Program Planning Manager
	Modeling and Simulation Manager
	Cost Engineering Manager
	Product and Project T&E Manager
	Communications and Outreach Manager

Prior to diverting any of the specified individuals, the contractor shall notify the Contracting Officer not less than thirty (30) calendar days prior to the diversion or substitution of key personnel and shall submit a written justification (including qualifications of proposed substitutions) to permit evaluation. The proposed changes will be approved in writing at the sole discretion of the Contracting Officer, with concurrence of the Contracting Officer's Representative.

H.3 CONFIDENTIALITY OF INFORMATION

(a) To the extent that the work under this contract requires that the contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the contractor shall, after receipt thereof, treat such information as confidential and agree 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 the 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 his 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. From time to time upon request of the Contracting Officer, the contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the contractor received such information.
- (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 subcontracts.

H.4 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications and Other Statements of the Offeror for this contract are hereby incorporated by reference.

H.5 PREFERENCE IN HIRING

With the exception of managerial personnel, the contractor, in performing this contract, agrees to give preference in hiring to qualified incumbent contractor personnel.

H.6 AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE) LEASING

(a) If the contractor leases ADPE equipment for use under this contract, the contractor shall include a provision in the rental contract stating that the Government shall have the unilateral right to exercise any purchase option under the rental contract between the contractor and the ADPE equipment vendor and to realize any other benefits earned through rental payments.

(b) The contractor shall furnish a copy of the rental contract to the Contracting Officer under the terms of this provision.

H.7 ORDERING PROCEDURE

Performance under this contract shall be subject to the following ordering procedures:

- (a) When requesting task proposals from the contractors in accordance with the clause entitled "Procedures for Issuing Task Orders," the Contracting Officer will issue a Task Proposal Request to the contractors identifying:
 - (1) The task to be performed;
 - (2) The desired schedule of performance;
 - (3) Required travel;
 - (4) Deliverables and required delivery dates;
 - (5) Government-furnished property to be provided;
 - (6) Special instructions
 - (7) Selection criteria (if applicable).

- (b) The contractor shall provide its task proposal within five working days of receipt of the Task Proposal Request, unless otherwise specified by the Contracting Officer.
- (c) The contractor's task proposal shall consist of the following information:
 - (1) Direct Productive Labor Hours (DPLH) by labor category on a monthly basis, including overtime (if authorized), and total DPLH, including subcontractor and consultant DPLH, if applicable.
 - (2) Travel and material estimate;
 - (3) Estimated subcontractors and consultants costs, including DPLH if applicable;
 - (4) Estimated computer time and cost, if applicable;
 - (5) Other pertinent information (e.g. inter-divisional transfers);
 - (6) Total estimated cost and performance award fee for fixed rate orders, or fixed price for firm fixed price orders;
 - (7) Any proposed revision to the schedule of performance.
 - (8) Information responsive to any special instructions in the Task Proposal Request.
- (d) Labor rates proposed by the contractor shall not exceed the rates set forth in Clause B.3, Compensation - Fixed Rate Task Orders.
- (e) Task Proposal Requests and Task Orders will be issued in writing unless otherwise authorized by the Contracting Officer.

H.8 PROCEDURES FOR ISSUING TASK ORDERS

The Government has awarded more than one contract for the work specified in the Statement of Work of this contract. Selection of a contractor for issuance of a specific task order will be made pursuant to paragraph (a) or (b) below.

- (a) The Contracting Officer may issue a task to any one of the contractors if:
 - (1) The task is valued at \$2,500 or less;
 - (2) Following any of the procedures of paragraph (b) would result in unacceptable delays in fulfilling the requirement which is the subject of the task order;
 - (3) The task requires services that are unique or highly specialized and that only one contractor can provide the services at the level of quality required;
 - (4) The task is a logical follow-on to a task order previously issued to a contractor pursuant to paragraph (b) below; or
 - (5) It is necessary to issue the task order to a contractor to fulfill a minimum guarantee. The Government may use this provision at any time during contract performance.
- (b) The contractor agrees that issuance of a task order in accordance with any of the following procedures is deemed to have provided the contractor a "fair opportunity to be considered" as that phrase is used in Section 303J(b) of the Federal Property and Administrative Services Act of 1949, as amended.
 - (1) Issuance of Task Orders Based Entirely or Substantially on Price.

The term "price" as used in this clause shall mean total estimated cost plus performance award fee for fixed rate task orders, and shall mean firm fixed price for firm fixed price task orders.

When issuing task orders based entirely on price, the contractor will provide a task proposal on a fixed rate or firm fixed price basis as set forth in the Task Proposal Request. The Government will perform an analysis of the proposal to assure that proposed rates conform to Schedule B of this contract and determine whether elements of cost reasonably reflect the nature of the prospective task. The Contracting Officer will select the recipient of the task with the lowest evaluated cost/price to the Government.

The Contracting Office may issue tasks based substantially on price. In such case, additional factors to be used in selecting the recipient of the task will be specified in the Task Proposal Request.

(2) Issuance of Task Orders Based Entirely or Substantially on Performance of Previous Task Orders.

When issuing tasks based entirely on performance of previous tasks, the Government will evaluate cost control and technical performance on previous tasks issued under the contracts taking into account performance under tasks most comparable to the new task. Where all contractors have not performed tasks under this and the companion contract(s), the Contracting Officer may consider the quality of the contractors' technical proposals under the solicitation leading to the award of this contract, taking into account the portion of the proposal most comparable to the new task. The Contracting Officer will select the contractor he or she believes most likely to perform the task at the highest quality consistent with the best value for the Government. After selection, the contractor will issue a Task Proposal Request to the selected contractor.

The Contracting Officer may choose to base issuance of a task substantially on performance of previous tasks. In such case, additional factors to be used in selecting the recipient of the task, and their relative importance, will be specified in a Task Proposal Request issued by the Contracting Officer.

(3) Issuance of Task Orders Based upon Other Criteria.

The Contracting Officer may issue tasks based on any other factors which he or she deems appropriate in the exercise of sound business judgment. Such factors include, but are not limited to, selection based upon highest technical rating of proposals for performance of a prospective task. The factors to be used in selecting the recipient of the task, and their relative importance, will be specified in the Task Proposal Request issued by the Contracting Officer.

- (c) Complaints concerning award of task orders shall be submitted to the Contracting Activity Ombudsman in accordance with DEAR 916.505

H.9 TECHNICAL DIRECTION

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

- (1) Directions to the contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
- (2) Provision of written information to the contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.

- (3) 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.

(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 total 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 article 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; or
- (2) Advise the contractor 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" of the contract.

H.10 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions 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.11 GOVERNMENT PROPERTY AND DATA

(a) Except as otherwise authorized by the Contracting Officer in writing, the contractor is not authorized to acquire as a direct charge item under this contract any equipment (including office equipment), furniture, fixtures or other personal property items.

(b) Acquisition Authorization Requirements

- (1) In the course of performance of this contract, the contractor may only acquire and direct charge to this

contract such items identified in Part III, Section J.

- (2) The contractor may request authorization for acquisition of additional items from the Contracting Officer. Any such request shall include an analysis of the most economical method of acquisition (e.g., lease versus purchase) and shall describe the material equity arising from any proposed lease arrangement, such as option credits.
- (3) Any changes in the acquisition authorization shall be reflected in a modification to this contract which revises the List of Government Property in Part III, Section J..
- (4) Authorization to acquire does not constitute consent to the placement of a subcontract.

(c) Government-Furnished Property and Data

Except as otherwise authorized by the Contracting Officer in writing, only that property and data specifically included in Part III, Section J, Attachment I shall be furnished.

(d) Reporting Requirements

The reports required shall be submitted in accordance with 48 CFR 945 and the reporting requirements set forth in Part III, Section J, Attachment B.

The reports are to include all capital equipment and sensitive items acquired or furnished under this contract, whether or not listed on the attachments referenced above.

H.12 SUBCONTRACTS

(a) Prior to the placement of subcontracts and in accordance with the "Subcontracts" clause in Section I, the contractor shall ensure that:

- (1) they contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts. Particular attention should be directed to the potential flowdown applicability of the clauses entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" and "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" contained in Part II, Section I of the contract;
- (2) any applicable subcontractor Certificate of Current Cost or Pricing Data (see FAR 15.804-2) and subcontractor Representations and Certifications (see Part IV, Section K, and the document referenced in the clause entitled "Representations, Certifications and Other Statements of the Offeror" contained in this Section H) are received; and
- (3) any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

(b) Prior to the award of any subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor, the disclosure required by 48 CFR (DEAR) 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest, in accordance with the clause contained in Section I of this contract. No work shall be performed by the subcontractor until the contractor has cleared the subcontractor for Organizational Conflicts of Interest (OCI).

H.13 SERVICES OF CONSULTANTS

(a) In addition to the provisions of the clause of this contract entitled "Subcontracts," the prior written consent of the Contracting Officer also shall be obtained:

- (1) Whenever any employee of the contractor is to be reimbursed as a "consultant" under this contract:
or
- (2) For the utilization of the services of any consultant under this contract exceeding the daily rates of \$278, exclusive of travel costs, or
- (3) Where the services of any consultant under this contract will exceed ten days in any calendar year, or exceed a total value of \$2,500.

(b) Whenever Contracting Officer written consent is required, the contractor will obtain and furnish to the Contracting Officer information concerning the need for and selection of such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consulting services of a similar nature.

(c) Prior to the award of any consultant agreements for advisory and assistance services, the contractor shall obtain from the proposed consultant the disclosure required by 48 CFR (DEAR) 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest, in accordance with the clause contained in Section I of this contract. No work shall be performed by the consultant until the contractor has cleared the consultant for Organizational Conflicts of Interest (OCI).

H.14 LABOR CATEGORY DESCRIPTIONS

Contractor direct labor personnel assigned to the performance of this contract shall satisfy as a minimum the applicable labor category qualifications, both education and experience, set forth in Section J, Attachment E, except as the Contracting Officer may authorize.

H.15 FUNDING

- (a) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, and the period of performance the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the ceiling amount specified in the Schedule. 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.
- (b) 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 the total amount so far allotted to the contract by the Government. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.
- (c) 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.
- (d) 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.

- (e) 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 compensate the contractor for DPLH or other direct items or services provided in an amount which exceeds the total amount allotted by the Government to this contract; and
 - (2) The contractor is not obligated to continue providing DPLH under this contract (including actions under the Termination clause of the contract) or incur costs in excess of the amount then allotted to the contract by the Government 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.
- (f) The ceiling price shall be increased to the extent that the amount allotted by the Government exceeds the ceiling price specified in the Schedule.
- (g) No notice, communication, or representation in any form other than that specified in subparagraph (e)(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 compensate the contractor for performing any work in an amount which exceeds the total amount allotted by the Government to this contract, whether that excess amount arose during the course of the contract or as a result of termination.
- (h) When and to the extent that the amount allotted by the Government to the contract is increased, the contractor shall be entitled to compensation for DPLH and other direct items or services provided before the increase in an amount which exceeds the amount previously allotted by the Government to the same extent as if the DPLH and other direct items or services were provided 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.
- (i) 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.
- (j) 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.

H.16 PAYMENTS UNDER FIXED RATE TASK ORDERS

The Government shall pay the contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

- (a) Hourly Rate
- (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, and general and administrative expense, excluding profit. Profit shall be paid pursuant to the performance award fee provisions in Section B of the contract. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) in accordance with the provisions of Clause G.2, Submission of Vouchers/Invoices. The contractor shall substantiate vouchers by evidence of actual payment and by individual daily job time cards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract,

and subject to the terms of (c) of this section, pay the voucher as approved by the Contracting Officer.

- (2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the contractor as provided in paragraph (d) of this section.
- (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.
- (4) Amounts paid for hourly rates shall be subject to adjustment pursuant to Clause B.5, Payment of Wages and Fringe Benefits.

(b) Materials and Subcontracts

- (1) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the contractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.
- (2) The cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause; provided, that the costs are consistent with subparagraph (b)(3) of this section. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (a)(1) of this section.
- (3) To the extent able, the contractor shall -
 - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the contractor shall promptly notify the Contracting Officer and give the reasons. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the contractor, or would have accrued except for the fault or neglect of the contractor. The benefits lost without fault or neglect on the part of the contractor, or lost through fault of the Government, shall not be deducted

from gross costs.

(c) Audit

At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (d) and (e) of this section), the Government shall promptly pay any balance due the contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(d) Assignment

The contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the contractor.
- (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the contractor to third parties arising out of performing this contract, that are not known to the contractor on the date of the execution of the release, and of which the contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the contractor that the Government is prepared to make final payment, whichever is earlier.
- (3) Claims for reimbursement of costs (other than expenses of the contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the contractor under the terms of this contract relating to patents.

(e) Refunds

The contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the contractor or any assignee, that arise under the materials portion of this contract and for which the contractor has received reimbursement, shall be paid by the contractor to the Government. The contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

H.17 PAYMENTS UNDER FIRM FIXED PRICE TASK ORDERS

The Government shall pay the contractor upon the submission of proper invoices or vouchers, the prices stipulated in the firm fixed price task order for supplies delivered and accepted or services rendered and accepted, less any deduction provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if:

- (a) The amount due on the deliveries warrants it; or
- (b) The contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total task order price.

H.18 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES

The contractor shall cooperate fully with all other on-site DOE contractors (including, but not limited to, support service, architect and engineering, janitorial, computer operation contractors, or consultants) and Government employees, and carefully fit its own work to such other work as may be directed by the Contracting Officer or the Principal Contracting Officer's Representative. 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.

H.19 ENVIRONMENT, SAFETY, AND HEALTH – ON-SITE SERVICE CONTRACTS

- (a) The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of his/her employees, DOE/FETC employees, and the public, and to prevent damage to the environment and DOE/FETC-owned materials, supplies, equipment, facilities and any other DOE/FETC-owned property.

The contractor shall comply, as a minimum, with the requirements of DOE/FETC's environment, safety, and health programs as implemented through DOE and its support contractor staff. These programs are based on implementation of DOE/FETC's Worksmart standard set, which is compendium of applicable Federal, state, and local regulations, consensus standards, and DOE directives (Part III, Section J, Attachment J, List of Environmental, Safety and Health Standards). In particular, the contractor shall, as a minimum, comply with the procedural, record-keeping, and reporting requirements of these DOE/FETC's environmental, safety, and health programs and their supporting DOE/FETC's directives. The major reporting requirements are outlined in DOE Order 231.1, Environment, Safety, and Health Reporting. Where conflict exists among the standards' requirements, the most protective shall be adopted, unless relief is provided by the Contracting Officer. In order to provide consistent application of environment, safety, and health requirements across the DOE/FETC sites, the contractor shall, to the maximum extent possible, utilize existing DOE/FETC directives.

The Contracting Officer shall notify the contractor, in writing, of any non-compliance with the provisions of this clause. After receipt of such notice, the contractor shall immediately begin to take corrective action. In the event that the contractor fails to comply with DOE/FETC's environment, safety, and health requirements, the Contracting Officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter, a start order for work resumption may be issued by the Contracting Officer. The contractor shall make no claim for an extension of time, or for compensation or damages by reason of, or in conjunction with, such work stoppage.

- (b) Specifically, the contractor shall plan, manage, and execute its work according to the principles of Integrated Safety Management, as outlined in DOE P 450.4, Safety Management Policy, October 15, 1996, and Integrated Safety Management System Guide, DOE G 450.4-1, Volumes 1 and 2, November 26, 1997. The contractor shall submit an Integrated Safety Management Implementation Plan to the Contracting Officer for review and approval within 30 days after the date of contract award. The plan shall detail how the contractor shall meet DOE's integrated safety management policy and principles, the contractor's corporate and DOE/FETC's environment, safety, and health requirements, and shall address the contractor's interface with the sites' existing ES&H programs, DOE staff, and other site contractors.
- (c) The contractor shall include this environment, safety and health clause in all subcontracts requiring work at the DOE/FETC sites. However, such flow down of responsibility shall not relieve the contractor of its obligation to assure compliance with the provisions of this clause.

- (d) The DOE or its authorized representative shall have the right to inspect any areas or facilities occupied by the contractor.
- (e) The contractor shall provide record keeping services, such as raw data, interpreted results, reports, correspondence, and other materials proving regulatory and standard compliance, according to DOE records management schedules.
- (f) Accidents or incidents resulting in human injury and/or property damage are to be reported immediately to the Contracting Officer or his/her representative.

Notification, recording and reporting requirements for accidents and/or incidents shall be conducted in accordance with 29 CFR 1904 and 1910. The Contracting Officer or his/her representative shall be provided with copies of all OSHA-required documentation within ten days of the accident and/or incident.
- (g) The contractor shall maintain an accurate record of on-site hours worked and shall provide this information to the Contracting Officer or his/her representative upon request.
- (h) The contractor shall collect the following environment, safety, and health indicators, if applicable:

Recordable Injury/Illness Rate (total number of OSHA-defined recordable injuries and illnesses/total hours worked)

Lost Work Day Case Rate (total number of OSHA-defined lost work day cases/total hours worked)

Regulated Pollutant Effluent (total pounds of permitted, regulated pollutants in air and water releases)

Hazardous Waste Generated (total cubic feet of hazardous waste shipped)

Corrective Maintenance Backlog (total number of corrective maintenance items over 90 days old and total number of corrective maintenance items due)

Preventive Maintenance Backlog (total number of preventive maintenance items over 90 days old and total number of preventive maintenance items due).
- (i) The contractor shall abide by the requirements of 48 CFR 970.5204-39, Acquisition and Use of Environmentally Preferable Products and Services.
- (j) The contractor shall allow participation of employees in DOE/FETC's site-wide emergency response program.

H.20 INDEMNITY – ENVIRONMENTAL, HEALTH AND SAFETY VIOLATIONS

Should the contractor, in the performance of work under this contract, fail to comply with the requirements of environmental permits, local laws or regulations, state laws or regulations, Federal laws or regulations, the Statement of Work and its Attachments, or a Task Order and cause any environmental, health or safety liability to be assessed against the Government, the contractor agrees to indemnify the Government for this liability. This requirement shall be placed in all subcontracts awarded by the contractor under this contract. The provisions of this clause are limited to liabilities not otherwise addressed by other provisions of this contract.

H.21 ORGANIZATIONAL CONFLICT OF INTEREST

Unless otherwise approved by the Contracting Officer in the Contracting Officer's sole discretion:

- (a) The contractor, its affiliates and successors, as defined in DEAR 952.209-72 contained in Part II, Section I, shall be ineligible to participate as prime, subcontractor or team member on any FETC

sponsored research, development or demonstration project.

- (b) The contractor's subcontractors may participate as prime or subcontractor on FETC sponsored research, development or demonstration projects provided a suitable mitigation strategy is developed to shield the subcontractor from any conflicting work.
- (c) "FETC sponsored research, development or demonstration projects" shall include any project in which FETC participates either through contract, grant, cooperative agreement, CRADA, Memorandum of Understanding, interagency agreement, or any other mechanism available to FETC.

H.22 52.216-18 ORDERING. (OCT 1995)

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued during the contract performance period referenced in Clause F.1.
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

H.23 YEAR 2000 COMPLIANCE

Year 2000 compliant means, with respect to information technology, the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

The contractor assures that items delivered under this contract are year 2000 compliant.

H.24 LOBBYING RESTRICTION (DEPT. OF INTERIOR AND RELATED AGENCIES, 1998)

The contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.25 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1998)

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

H.26 INSURANCE REQUIREMENTS

In accordance with FAR 52.228-5 (Section I), the Contractor shall provide insurance in the minimum amounts as set forth below.

A. Workers' Compensation

The contractor shall maintain workers' compensation in accordance with applicable law.

B. Comprehensive General Liability Other Than Automobile

Bodily Injury per person	\$ 500,000
per occurrence	\$1,000,000
Property Damage per accident	\$ 500,000
aggregate	\$1,000,000

C. Comprehensive Automobile

Bodily Injury per person	\$ 500,000
Per occurrence	\$1,000,000
Property Damage per accident	\$ 50,000

H.27 COMMUNITY COMMITMENT

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

SECTION I - CONTRACT CLAUSES

L1 52.202-1 DEFINITIONS. (OCT 1995)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) "Commercial component" means any component that is a commercial item.

(c) "Commercial item" means -

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that -

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for -

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services -

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.

(e) "Nondevelopmental item" means -

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring

department or agency, or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

L2 52.203-3 GRATUITIES. (APR 1984)

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

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

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

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

(1) To pursue the same remedies as in a breach of the contract; and

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

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

L3 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.

L4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (JUL 1996)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under

this contract which exceed \$100,000.

LE 52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1996)

(a) Definitions.

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

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

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

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

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

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

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

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

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

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

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

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

LE 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.

L7 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.

L8 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (JUN 1997)

(a) Definitions.

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

(b) Prohibitions. (1) Section 1352 of Title 31, 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 services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

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

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

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

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

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

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

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of 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.

1.9 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER. (JUN 1996)

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March

25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent post-consumer material.

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

L.10

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

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

L.11

52.215-2 AUDIT AND RECORDS - NEGOTIATION. (AUG 1996)

(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 records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
- (2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available 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.12 52.215-9 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.13 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.14 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.15 52.215-15 TERMINATION OF DEFINED BENEFIT PENSION PLANS. (OCT 1997)

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. If pension fund assets revert to the contractor or are

constructively received by it under a termination or otherwise, the contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(j)(4). 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).

L.16 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS. (OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).

L.17 52.216-22 INDEFINITE QUANTITY. (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract more than six (6) months after the contract completion date.

L.18 52.216-28 MULTIPLE AWARDS FOR ADVISORY AND ASSISTANCE SERVICES. (OCT 1995)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

L.19 52.217-3 OPTIONS TO EXTEND SERVICES (AUG 1989)

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 within the period specified in the Schedule.

L.20 52.219-8 UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS. (JUN 1997)

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

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

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or

more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) The term "small business concern owned and controlled by women" shall mean a small business concern -

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

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

(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

**L.21 52.219-9 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN.
(AUG 1998) - ALTERNATE II (MAR 1996)**

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

(b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

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

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

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns 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;

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

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

(iv) 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) Small disadvantaged business concerns, and

(iii) 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 Automated Source System (PASS) of the Small Business Administration, 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, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, 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) Small disadvantaged business concerns; and
- (iii) 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, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

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

(10) Assurances that the offeror will -

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms; and
- (iv) Ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged 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., PASS), guides, and other data that identify small, small disadvantaged and women-owned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged 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 small disadvantaged business concerns were solicited and if not, why not;
 - (C) Whether women-owned small business concerns were solicited and if not, why not; and
 - (D) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact -
 - (A) Trade associations;
 - (B) Business development organizations; and

(C) Conferences and trade fairs to locate small, small disadvantaged and women-owned small business sources.

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

(A) Workshops, seminars, training, etc., and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual 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, small disadvantaged 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, small disadvantaged 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, small disadvantaged and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as 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 subcontracting plan on a plant or division-wide basis which 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)(1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(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, Small Disadvantaged and Women-Owned Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

1.22 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN. (AUG 1998)

(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, Small Disadvantaged and Women-Owned 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, Small Disadvantaged and Women-Owned 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.

1.23 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)

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

1.24 52.222-3 CONVICT LABOR. (AUG 1996)

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

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

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

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

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

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

1.25 52.222-26 EQUAL OPPORTUNITY. (APR 1984)

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

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(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. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(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, 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 subparagraph (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 agency 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.

1.26 52.222-28 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS. (APR 1984)

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

62.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (APR 1998)

(a) Definitions. As used in this clause -

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

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

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

Veteran of the Vietnam era means a person who -

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

(b) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as -

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

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

(c) *Listing openings.* (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

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

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

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

(ii) The rights of applicants and employees.

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

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

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

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

L28 52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS. (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.

1.29 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (APR 1998)

(a) The contractor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

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

(1) As of the end of any pay period during the period January through March 1st of the year the report is due, or

(2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

1.30 52.223-2 CLEAN AIR AND WATER. (APR 1984)

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause, means -

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with -

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Contractor agrees -

- (1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

1.31 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1987)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

MATERIAL

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

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to -

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

L32 **52.223-6 DRUG-FREE WORKPLACE. (JAN 1997)**

(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 at which 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.

L33 52.223-10 WASTE REDUCTION PROGRAM. (OCT 1997)

(a) Definition. "Waste reduction," as used in this clause, 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 12873, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. Any such program shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.) and implementing regulations.

L34 52.223-14 TOXIC CHEMICAL RELEASE REPORTING. (OCT 1996)

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

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

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

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

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

(4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation (FAR); or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

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

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

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

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

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

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

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

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

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

L.35 952.224-70 PAPERWORK REDUCTION ACT. (APR 1994)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

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

L.36 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.

L.37 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.

L38 52.225-3 BUY AMERICAN ACT - SUPPLIES. (JAN 1994)

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

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

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

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

(b) The Contractor shall deliver only domestic end products, except those -

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see FAR 25.105).

L39 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (AUG 1998)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea, and Sudan.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

L40 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES. (SEP 1996)

(a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.

(b) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups

(including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the self-certification of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the self-certification of a subcontractor, the Contracting Officer shall refer the matter to the:

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and
Grants Administration
1849 C Street, NW, MS-334A-S1B
Washington, DC 20245

The BIA will determine the eligibility and notify the Contracting Officer. The 5 percent incentive payment will not be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(d) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer shall seek funding in accordance with agency procedures. The Contracting Officer's decision is final and not subject to the Disputes clause of this contract.

1.41 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.

1.42 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (AUG 996)

(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.

L43 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.

L44 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.

L45 52.227-10 FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER. (APR 1984)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

1.46 952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT. (SEP 1987) (DEVIATION)

(a) Definitions.

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

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

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

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

"DOE patent waiver regulations," as used in this clause, means the Department of Energy patent licensing regulations. See 10 CFR part 784.

(b) Allocations of principal rights.

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

(2) Greater rights determinations.

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

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make

copies of the patent application file.

(c) Minimum rights acquired by the Government.

(1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, transferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant such a license itself if it determines that

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in their 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 that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in the 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 may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (e)(2) of this clause. When DOE approves such reservation, the contractor's license will extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications

and continues to make the benefits to the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be licensing should not be revoked or modified. The Contractor has the right appeal in accordance with applicable agency licensing regulations and 37 CFR part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The Commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted by a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the right granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public upon a petition by an interested person justifying such hearing:

(A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign

country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports.

(1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication, of such invention known to the Contractor. The disclosure to DOE shall be in the form of 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 or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Section (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.

(4) The Contractor agrees to require by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file applications on subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject inventions 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; complied with the procedures.

(iii) The Contractor and its inventors have complied with the procedures.

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

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

(g) *Withholding of payment.* (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 reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.*

(1) The contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(i) *Preference United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the

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

(j) *Atomic energy.*

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

(2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) *Background Patents.*

(1) "Background Patent" means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purpose of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purpose of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) *Publication.* It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) *Forfeiture of rights in unreported subject inventions.*

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the

invention and all facts pertinent to this contention to the facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer, or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

L47 62.227-14 RIGHTS IN DATA - SPECIAL WORKS. (JUN 1987)

(a) Definitions.

"Data," as used in this clause, means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

"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, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights. (1) The Government shall have -

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright - (1) Data first produced in the performance of this contract. (i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to such data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d) Release and use restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) Indemnity. The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

L48 52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION. (JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective -

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

L49 52.229-3 FEDERAL, STATE, AND LOCAL TAXES. (JAN 1991)

(a) "Contract date," as used in this clause, 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.

"All applicable Federal, State, and local taxes and duties," as used in this clause, 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," as used in this clause, 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," as used in this clause, 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.

(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.

L50 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 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$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.

1.51 82.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES. (APR 1998)

(a) The Contractor, in connection with this contract, shall -

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard - Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. 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.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, 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 of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 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, and 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, except that -

(1) 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.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) 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.

1.52 52.230-4 CONSISTENCY IN COST ACCOUNTING PRACTICES. (AUG 1992)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defense shall be available for inspection and use by authorized representatives of the United States Government.

1.53 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 Practices):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and 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 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; 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. If award of the subcontract results in making one or

more CAS effective for the first time, this fact shall also be reported.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

L54 52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (MAY 1997)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

L55 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS. (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided, that this limitation shall not apply to -

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

L56 52.232-17 INTEREST. (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
- (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
- (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

L57 52.232-18 AVAILABILITY OF FUNDS. (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

L58 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.

L59 52.232-25 PROMPT PAYMENT. (JUN 1997)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered 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 section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (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 subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred 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 shall be the 30th day after the date of the Contractor's invoice; provided a proper invoice is received 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 subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to 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, prompt payment discount 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 be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(b) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(4) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (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 when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed, 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 interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days

taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed 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. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based 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 following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (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).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays 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. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(6) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(7) Additional interest penalty. (i) A penalty amount, calculated in accordance with subdivision (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor -

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors 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) Demands must be postmarked on or before the 40th day after payment was made, except that -

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except -

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) 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 payments - (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(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.

L60 52.233-1 DISPUTES. (OCT 1995)

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

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the

Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(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 ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(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 the contract, and comply with any decision of the Contracting Officer.

L61 52.233-3 PROTEST AFTER AWARD. (AUG 1996)

(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 Default, or the Termination for Convenience of the Government, 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 or contract price, or both, 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.

1.62 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.

1.63 52.237-3 CONTINUITY OF SERVICES. (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to -

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

1.64 52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME. (OCT 1997)

(a) Definitions. As used in this provision -

"Uncompensated overtime" means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

"Uncompensated overtime rate" is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ($\20.00×40 divided by 45 = \$17.78).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours,

and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

L65 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.

L66 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.

L67 52.243-1 CHANGES - FIXED-PRICE. (AUG 1987) - ALTERNATE I (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.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(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) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) 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.

L68 52.243-3 CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS. (AUG 1987)

(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) Drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(4) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, 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) Ceiling price;

(2) Hourly rates;

(3) Delivery schedule; and

(4) 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.

1.69 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: []

(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: Brandegee Inc., Energetics Inc., Enviroissues, Florida International University, ICF Incorporated, Project Performance Corporation, Waste Policy Institute, Dawnbreaker.

L70 52.244-6 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.

L71 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS. (APR 1998)

(a) Definitions.

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

"Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

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

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

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

L72 52.245-1 PROPERTY RECORDS. (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

L73 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS). (DEC 1989)

(a) Government-furnished property. (1) 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 any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") 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.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, 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.

(4) If Government-furnished property is not delivered to the Contractor by the required time, 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 such 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 the property available for performing this contract and there is any -

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) of this clause; or
- (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property. (1) The Government shall retain title to all Government-furnished property.

(2) 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. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not 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.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract -

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon -

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(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 this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, 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 industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(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.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(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) Risk of loss. Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property consumed in performing this contract.

(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) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government

property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government -

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) 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 of the United States of America, its territories, or possessions, 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.

L74 52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS). (JAN 1986)

(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.

(l) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(j) Abandonment and restoration of Contractor premises. Unless otherwise provided herein, the Government -

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) 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 of America, its territories, or possessions, 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.

1.76 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.

1.76 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS. (JAN 1997)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

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

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

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

(End of statement)

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

L77 62.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS. (JUN 1997)

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are--

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

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

(i) The Contracting Officer, and

(ii) The:

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

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

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.

- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) Except for contracts at or below the simplified acquisition threshold, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to--

- (1) Contracts at or below the simplified acquisition threshold;
- (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
- (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
- (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
 Maritime Administration
 400 Seventh Street, SW
 Washington, DC 20590
 Phone: 202-366-4610.

1.78 52.249-6 TERMINATION (COST-REIMBURSEMENT). (SEP 1996) -- ALTERNATE V (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if--

- (1) The Contracting Officer determines that a termination is in the Government's interest; or
- (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be

reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount 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 the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including--

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under subparagraph (h)(1) of this clause but omit--

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(f) 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 (i) 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 (i) 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) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

(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.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

L79 62.249-14 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.

L80 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.

L81 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES. (JAN 1991)

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

L82 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):

[Insert one or more Internet addresses]

L83 52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

L84 952.204-2 SECURITY. (SEP 1997)

(a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) *Regulations.* The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

(c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) *Definition of restricted data.* The term "Restricted Data" means all data concerning:

- (1) design, manufacture, or utilization of atomic weapons;
- (2) the production of special nuclear material; or

(3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142d. of the Atomic Energy Act of 1954, as amended.

(f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) *Definition of Special Nuclear Material (SNM).* SNM means:

(1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or

(2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Security clearance of personnel.* The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).

(j) *Subcontracts and purchase orders.* Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

L85

952.204-70 CLASSIFICATION/DECLASSIFICATION. (SEP 1997)

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

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

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

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

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

952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR. (APR 1984)

(a) For purposes of this clause, a foreign interest is defined as any of the following:

- (1) A foreign government or foreign government agency;
- (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
- (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or
- (4) Any person who is not a U.S. citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.

(c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(d) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the answers to the questions presented in DEAR 952.204-73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

(e) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the contracting officer shall consider proposals made by the contractor to avoid or mitigate foreign influences.

(f) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

(g) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.

(h) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(i) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including rights to terminate this contract.

(j) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information require by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes FOCI and the reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

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

(a) Purpose. The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

- (1) Use of Contractor's Work Product.

(i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of three (3) years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information. (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

(1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

(a) Foreign travel, when charged directly, shall be subject to the prior approval of the contracting officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico, and the United States and its territories and possessions.

(b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

L89 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS. (JUN 1995)

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

(a) *Contracted airlines.* Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Travel Regulation (FTR), 41 CFR Part 301-15, Travel Management Programs. It stipulates that cost-reimbursable contractor employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, contracting officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the contracting officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the contractor.

(b) *Hotels/motels.* Participating hotels and motels which extend discounts are listed in the FTD, which shows rates, facilities, and identifies by code those which offer reduced rates to cost-reimbursable contractor employees while traveling on official contract business.

(c) *Car rentals.* The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms to cost-reimbursable contractor employees while traveling on official contract business are listed in the FTD.

(d) *Procedures for obtaining service.*

(1) Identification and method of payment requirements for participating Federal contracted airlines are listed in the FTR. Travel discount air fares may be ordered by the issuance of a GTR either directly to the contractor, or to a Scheduled Airline Travel Office (SATO) or Federal Travel Management Center (FTMC), provided the letter of identification signed by the cognizant contracting officer accompanies the order. In appropriate instances, such as geographical proximity, contractors may obtain discount air fares through a DOE office of a cooperating local travel agency when neither a SATO or FTMC is available. Some airlines allow the purchase of discounted air fares with cash or credit card.

(2) In the case of hotel and motel accommodations, reservations may be made by the contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.

(3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.

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

Format for Government Contractors to Qualify for Travel Discounts (To be typed on agency official letterhead)

To: [(Source of ticketing, accommodations or rental)]

Subject: Official Travel of Government Contractor

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

[Signature, title and telephone number of the contracting officer]

L90 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (JAN 1993)

(a) The contractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR Part 708.

(b) The contractor shall insert or have inserted the substance of this clause including this paragraph (b), in subcontracts, at all tiers, with respect to work performed on-site at DOE-owned or -leased facilities, as provided for at 10 CFR Part 708.

L91 52.252-6 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.

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

SECTION J - LIST OF ATTACHMENTS

J.1 SECTION J – LIST OF ATTACHMENTS

<u>Attachment</u>	<u>Description</u>
A	Statement of Work
A-1	FETC Customer List
A-2	Statement of Work Definitions
A-3	Related Work Processes
B	Reporting Requirements Checklist
C-1	Schedule of Fully Burdened Labor Rates
C-2	Schedule of Hourly Wages and Fringe Benefits
D	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan
E	Labor Category Descriptions
F	Performance Evaluation Plan
G	Reserved
H	Organizational Conflicts of Interest
I	Property
J	List of FETC Environment, Safety and Health and Related Standards

STATEMENT OF WORK

**PROGRAM, PRODUCT AND PROJECT ENGINEERING
AND ANALYSIS (P3EA) SERVICES FOR THE
FEDERAL ENERGY TECHNOLOGY CENTER (FETC)**

OBJECTIVE

The objective of this contract is to provide a broad spectrum of Program, Product and Project Engineering and Analysis (P3EA) and related services to the Department of Energy (DOE) Federal Energy Technology Center (FETC) in support of FETC's mission to solve national energy and environmental problems.

It is the contractor's responsibility to develop and implement innovative approaches and adopt practices that foster continuous improvement evident in FETC's mission accomplishments. FETC expects the contractor to work closely with FETC in strategic initiative and planning activities and to produce effective and efficient management, systems, and work products that challenge the status quo while maintaining highest levels of quality and responsiveness. Thus, highly technical, scientific, and professional personnel of wide ranging disciplines are challenged to excel in providing this specialized technical support. The contractor shall fully comply with all applicable laws, regulations, and terms and conditions of the contract.

BACKGROUND

FETC is Federally owned and operated. The two principal FETC sites, located at 3610 Collins Ferry Road, P.O. Box 880, Morgantown, West Virginia, and at 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh (i.e., Bruceton, South Park Township), Pennsylvania, are 65 miles apart. FETC is a preeminent Federal organization providing practical solutions to energy and environmental problems – solutions garnered through innovative public-private partnerships and alliance formation. FETC performs, procures, and partners in technical Research, Development, and Demonstration (RD&D) to advance technology into the commercial marketplace, thereby benefiting the environment, contributing to U.S. employment, and advancing the position of U.S. industries in the global market. FETC was created in December 1996 through the consolidation of the former Morgantown Energy Technology Center and the former Pittsburgh Energy Technology Center. These predecessor organizations have been involved in fossil energy research for the past 50 years.

Under the DOE's decentralized organizational structure, FETC, a field organization of the Office of the Assistant Secretary for Fossil Energy (FE), is assigned lead mission responsibilities for FE and Office of the Assistant Secretary for Environmental Management (EM) programs. FETC is also assigned the responsibility for managing, implementing, assessing and supporting other DOE, Government and International programs and projects performed at locations and facilities either managed by FETC or at sites managed by others. FETC's programs and projects are performed via various mechanisms including contracts, grants or cooperative agreements as well as international agreements with other Federal and State organizations. These projects are located in the United States and in foreign countries.

A representative list of FETC P3EA customers, with their URL address, is provided herein by Attachment A-1. P3EA services called for by this contract will primarily support FETC's program, product and project planning and Implementation responsibilities (i.e., the Office of Product Management for Fuels and Speciality Markets, the Office of Power Systems Product Management, the Office of Product Management for Environmental Management, the Office of Science and Technology, the Office of Project Management, and the Office of Systems and Environmental Analysis. Information about FETC's mission and organization is available at URL address, <http://www.fetc.doe.gov>).

SCOPE

The contractor shall provide a broad spectrum of P3EA services to assist in the timely and proper execution of FETC's assigned program, product and project planning and implementation responsibilities. The contractor shall furnish the necessary management, supervision, qualified personnel, materials, supplies, equipment, facilities, training, technical expertise, and services required to perform the P3EA services delineated herein or as may otherwise be approved by the DOE on a task order basis.

The contractor shall perform P3EA services related to Fossil Energy (FE) and Environmental Management (EM) activities, as well as to any other program area that FETC is presently or may become involved in during the term of this contract. The P3EA services delineated herein include the following: (1) Planning and Program Management Support, (2) Modeling and Simulations Technical and Engineering (T&E) Support, (3) Cost Engineering, Estimating and Analysis T&E Support, (4) Product and Project T&E Support, and (5) Communications and Outreach Support.

Attachment A-1, titled FETC CUSTOMER LIST, provides a representative list of FETC's customers.

Attachment A-2, titled STATEMENT OF WORK DEFINITIONS, defines the terms used herein.

Attachment A-3, titled RELATED WORK PROCESSES, identifies critical information about numerous work processes required for performance of this Statement of Work.

WORK TO BE PERFORMED

1.0 Planning and Program Management Support

The contractor shall provide a broad spectrum of planning and program management services, such as literature searches and background reviews, technical and market assessments, and strategic planning which include but are not necessarily limited to:

- 1.1. Assist in planning, such as: provide strategic planning support and act as facilitators for DOE's management planning efforts on an as-needed basis; prepare assessments to assist FETC with its strategic program development; assess existing/planned FETC RD&D programs to ascertain consistency with goals and strategies established by the relevant offices of the DOE; support strategic planning and program development through engineering evaluations and team assignments; prepare studies, evaluations, assessments, and reviews to address specific technical, management, and environmental regulatory issues with emphasis on life-cycle system analysis, modeling, costing, and economics; monitor and assess technical developments that may have planning or programmatic significance; evaluate market potential and performance requirements of current and advanced technologies, and identify information gaps; perform technical analysis of energy-intensive key industries; and support the evaluation of technologies and processes that have an impact on business development plans.
- 1.2. Perform technical assessments, such as: conduct literature searches and technical background reviews; provide reviews, assessments, and summaries of technical discussions and reports for purposes such as identification of alternative approaches and means for resolving technical issues; assess process and/or system performance data with respect to existing and future requirements and regulations; and perform independent management, business, engineering, architecture/ engineering, and process reviews, audits and/or assessments of programs and projects world-wide.
- 1.3. Assess program activities with respect to commercialization, such as market potential, supply/demand factors, available resources and product qualities; review commercial/conceptual plan flowsheets to assess the adequacy of technical design and environmental controls; assess potential and ongoing RD&D projects and programs to help optimize their technical, management, cost, schedule, and environmental and/or regulatory

compliance; and gather market information on environmental by-product wastes relevant to DOE products and analyze this information for recommendations of designing ways to market the technology.

- 1.4. Perform energy and environmental technology impact and other market-related assessments, such as: gather information on DOE products/projects and perform technology assessments, tradeoff studies, and analyses, and identify data gaps; evaluate various advanced power, extraction, and conversion technology concepts; prepare summary reports of state-of-the-art developments; prepare technical risk analyses and risk management assessments; prepare engineering tradeoff assessments of competing technologies; perform competition benchmark studies; prepare cost benefit analyses; and report information obtained and recommendations for target markets.
- 1.5. Perform market penetration analyses, such as: assess market potential for FETC products; assess potential market size and expected market conditions; assess expected marketing actions and factors that determine market choice; identify expert judges who are familiar with a market; design surveys; and collect and analyze survey information.
- 1.6. Analyze international business and technical opportunities in support of DOE's international initiatives; collect and analyze data on energy and environmental status and needs/growth in regions and/or countries defined by DOE; define, assess, and develop marketing plans for markets to describe potential opportunities for U.S. focus; identify environmental issues/factors; and assist in the enhancement of partnerships with U.S. industry.
- 1.7. Conduct RD&D programmatic evaluations, such as: assess the state of technologies and identify technology gaps and recommendations for RD&D project initiatives to resolve technology gaps; perform technical assessments and prepare recommendations on the pros and cons of alternative or competing RD&D technologies; review existing energy-related programs, and make recommendations targeted at minimizing duplicate efforts for the purpose of maximizing technical achievement with prudent expenditure of public funds; and prepare process, technical, and economic trade-off studies, comparative technology assessments, scale-up or commercial feasibility studies, and provide recommendations to DOE.

2.0 Modeling and Simulations T&E Support

The contractor shall provide a broad spectrum of modeling and simulation T&E services, such as the development, application, maintenance and support of steady-state, dynamic, mathematical, process, economic, scientific and environmental models and simulations, support to FETC users, and projection of technical, economic, and environmental performance. These services shall include, but not necessarily be limited to:

- 2.1. Develop, perform, and document simulation, modeling, and parametric studies for energy, environmental, and other processes of interest to FETC in areas such as dynamic simulation, predictive rating models, process optimization, and design of process units and systems.
- 2.2. Develop, evaluate, validate, apply and interpret environmental representation, process, evaluation, impact and decision models for all media (e.g., air, water and soils).
- 2.3. Analyze and integrate geological, geochemical, and geophysical data from commercial and government databases; generate three-dimensional geological models for use in resource assessment and recovery analysis; develop geologic screening models; test and validate natural gas systems models; analyze hydrocarbon reservoirs and basins; and provide drilling and stimulation methods studies and site selection studies for fuel projects including gas hydrates.

- 2.4. Analyze, design, install, modify, test, calibrate, verify, and document modeling software and associated mathematical, stochastic and scientific techniques.
- 2.5. Support the application of *Icarus* for cost estimation and cost analysis; develop specialized cost models for equipment not contained in the cost model library.
- 2.6. Develop integrated applications of *Icarus* Process Evaluator, or other auxiliary programs with *ASPEN Plus*, or other software systems.
- 2.7. Provide support to FETC tasks with ASPEN Technology, Inc., or others, to incorporate improved capabilities, such as the mixed-integer non-linear programming optimization, into *ASPEN Plus*.
- 2.8. Develop, document and test system simulations and process models to ensure compatibility with available simulation codes and commercially available simulators.
- 2.9. Evaluate other hardware or software products, such as a desktop process simulator to complement *ASPEN Plus*, that could enhance FETC capabilities.
- 2.10. Translate selected simulations from the *ASPEN* Public version or simulations developed by outside contractors into *ASPEN Plus* format
- 2.11. Provide technical assistance and hot-line service for specialized hardware and software systems, such as *ASPEN Plus*, *Icarus*, *DIPPR*, *GATE*, and *GT/PRO*, *PC-Trax*, the archival system, and other software development.
- 2.12. Support maintenance of specialized computer hardware, software, archival, and documentation systems required to perform functions under this task area.

3.0 Cost Engineering, Estimating and Analysis T&E Support

The contractor shall provide a broad spectrum of cost engineering, estimating and analysis T&E services. The contractor shall use cost estimating software models and tools such as *Icarus*, *SUCCESS* and *MCACES*. These T&E services shall include, but not necessarily be limited to:

- 3.1. Participate and assist in the development of independent Government cost estimates and activity-based cost estimates.
- 3.2. Participate in independent assessments, validations, assessments of project cost estimates and schedules, uncertainty and project technical risk analyses, and cost risk analyses.
- 3.3. Perform cost analyses, cost-benefit analyses, economic analyses and impact studies, and develop economic evaluation techniques for the assessment of key process systems, alternative process designs, alternative program/project implementation strategies, energy and/or environmental RD&D projects, schedules, construction plans and other factors; analyze costs for factors such as site locations, viability of participant financing, environmental factors and transportation costs that may impact the process.
- 3.4. Prepare cost estimates and analyses of capital and operating costs for technologies and processes, such as fuel conversion technologies, environmental restoration technologies and waste management techniques.

4.0 Product and Project T&E Support

The contractor shall provide a broad spectrum of scientific, technological and quality assurance/quality control T&E services associated with existing energy and environmental activities

and new initiatives. These services shall include, but not necessarily be limited to:

- 4.1. Provide support to program, product and project planning and analysis and acquisition planning, such as: evaluate program scope and definition, including development of work breakdown structures; develop and assess progress and performance indicators; collect, analyze and report key financial, technical and regulatory data; develop and assess benchmarks; and assist in collecting lessons learned to promote contract reform.
- 4.2. Provide support to program, product and project management, such as: design, develop and implement management control systems; establish baseline control processes and activity-based management systems; and independently perform or participate in value engineering processes, assess cost-schedule control systems and earned-value systems, and validate project baselines.
- 4.3. Perform process engineering, such as: develop and evaluate conceptual process designs, process equipment design, designs for process optimization, functional specifications, performance estimates, and economic evaluations for energy, environmental, and other processes, facilities and process equipment; and, prepare system design reports, conceptual design studies, and/or reference plant design studies in sufficient detail and quality for publication.
- 4.4. Develop periodic program status reports, project results and progress reports, special technical reports, design reviews, process test plans, operating plans, environmental test plans and related documents for DOE review and approval; which may include, but not necessarily be limited to recommendations to help assure that project objectives and schedules are consistent with program goals.
- 4.5. Review results from experimental units to evaluate and verify performance predictions with regard to efficiency, yields, product composition, environmental performance and other relevant information; analyze data from experimental equipment and formulate conclusions (e.g., about coal conversion and utilization processes and mechanisms); assess results from RD&D projects and programs to ensure that appropriate data are being collected and to resolve technical, management, cost, schedule, and environmental questions; assess experimental and demonstration plant results for pollutant types and quantities to predict environmental, economic, and/or technical performance; and document and maintain data bases.
- 4.6. Prepare, review, and/or assess criteria for process or component performance evaluations and process stream characterization data for inter-process comparison.
- 4.7. Assess capabilities of existing RD&D facilities, organizations, and people for use in resolving technical issues and define technical requirements for modifications to existing facilities or the establishment of new facilities.
- 4.8. Support environmental compliance, characterization, assessment, remediation management and consultation, and pollution prevention activities, such as:
 - 4.8.1 Assist in the preparation of documents supporting National Environmental Policy Act (NEPA) compliance, such as Environmental Assessments, Environmental Impact Statements, Records of Decision, Findings of No Significant Impact, Mitigation Action Plans, and other related documents; coordinate and support public scoping meetings, public hearings and other forums;
 - 4.8.2 Provide consultation support with respect to the interpretation and application of Federal, State, local and international environmental laws and regulations (e.g., Clean Air Act, Clean Water Act, Comprehensive Environmental Response Compensation and Liability Act, Resource Conservation and Recovery Act, Toxic

Substances Control Act, Federal Facilities Compliance Act, etc.);

- 4.8.3 Conduct cumulative environmental impact and risk analyses for a wide variety of regional and national interests such as mining, chemical, oil and gas, nuclear, agribusiness, manufacturing, recreation, etc.;
 - 4.8.4 Perform analyses relating to environmental issues, including the impact of proposed and existing legislation; identify the potential impact of pending and projected regulations relating to, among others: acid rain control, global warming, waste management, technology deployment, clean water, and groundwater contamination; review the potential impact of such legislation as the Alternative Fuels Act and the related developing fuels such as methanol-fueled vehicles; and prepare background analyses and comments on proposed environmental standards;
 - 4.8.5 Assist in the preparation of environmental analyses; assess potential market size; conduct background studies required for the preparation of planning documents; and review and comment on environmental analyses prepared by others.
- 4.9. Provide support for natural resources analysis and management, such as: analyze and manage a broad range of engineering and geological research in support of product areas, such as natural gas drilling technology, environmental protection, resource and reserves, low-quality natural gas, gas storage, and development of low-permeability reservoirs; develop and apply methodologies for valuations of natural resources and ecosystem features; integrate legal, regulatory, technical and socio-economic issues related to ecosystem planning, analysis and management; assess and assist invasive species management; and support DOE assessments and assistance to Native Americans' Tribal resources and energy development, integration, and management.
 - 4.10. Conduct energy management analyses, audits, and conservation studies, and support FETC in the implementation of results.
 - 4.11. Perform off-site Government-related health physics, ergonomics and safety analysis assessments.
 - 4.12. Provide materials science, technology and transportation analysis and implementation services.
 - 4.12. Evaluate extraction, utilization, and conversion technologies and review geological data, production technology, reservoir characterization data, and technical risk assessments.
 - 4.13. Provide quality assurance/quality control support services, such as: assist FETC in developing, implementing, and maintaining quality assurance programs for selected projects and activities with emphasis on achieving a high degree of operational success, with due consideration to health and safety, environmental protection and reliability of data acquisition; and assess quality assurance/control elements, practices, policies, and procedures that are necessary to successfully accomplish contract activities through inspections, audits, checklists, and surveillance.

5.0 Communications and Outreach Support

The contractor shall provide a broad spectrum of advisory, public information, community/industry/intergovernmental relations, outreach, technology transfer, marketing communication, and related services. The services shall include, but not necessarily be limited to:

- 5.1. Provide technical input to P3EA-related studies, assessments, topical reports, and technical papers and engineering expertise for items such as interactive multimedia presentations, technology transfer coordination with industry, FE technology transfer manuals or other

relevant DOE documents, licensing agreements, Cooperative Research and Development Agreements (CRADAs); collect, evaluate, and apply customer feedback to improve communications; prepare documents and presentation materials in various formats; prepare reports, highlights, news clips, and country-specific background information; gather statistics and data on technology transfer activities, collect and report technology transfer measures, and maintain technology transfer data base; and organize and coordinate focused and specialized technical meetings and workshops principally off-site and requiring P3EA knowledge.

- 5.2 Support international activities to promote the technical, environmental, and economic advantages of U.S. technologies and to promote favorable policies for the deployment of U.S. goods and services in the energy and environmental sectors; develop international meeting technical content and facilitate international review meetings, workshops, training, and other forums in accordance with established international protocol guidelines; coordinate specialized communication and interactions between FETC and contractor visitor control personnel for such items as visitor and meeting itineraries and agendas, orientation and social adjustment, immigration and visa assistance, transportation and lodging, facility tours, and reports; assist foreign visitors attending FETC-sponsored conferences and visits to FETC; assist FETC staff during technical discussions with representatives from foreign participants associated with any FETC-related international cooperative agreements; provide input to and operate FETC's system for managing foreign visits; assist FETC liaison activities to ensure open communication, within FETC and between FETC and outside professional organizations; and provide technical assistance or training in other countries where DOE is working to the extent that short-term assignments in these countries are possible.
- 5.3 Assist FETC's public participation activities, such as interactions with local, regional and national groups, intergovernmental organizations, communities, open house events, environmental groups (e.g., watershed associations) and advisory and special interest groups; develop communication plans for environmental and other projects; and develop and coordinate comprehensive public/stakeholder involvement plans.
- 5.4 Provide P3EA support for public affairs and information management, such as: assist in developing responses to public inquiries related to energy and other FETC activities; and maintain an inventory of FETC public affairs information and publications.

DELIVERABLES

The periodic, administrative and final reports shall be submitted in accordance with Part III, Section J, Attachment B, Reporting Requirements Checklist. The contractor shall also be responsible for providing specific deliverables identified under the individual task orders issued.

FETC CUSTOMER LIST

Customers supported by FETC include but are not limited to:

DOE

Fossil Energy (FE)

<http://www.fe.doe.gov>

Environmental Management (EM)

<http://www.em.doe.gov>

Defense Programs (DP)

<http://www.dp.doe.gov>

Fissile Materials Disposition (MD)

<http://www.doe-md.com>

Nuclear Energy, Science and Technology (NE)

<http://www.ne.doe.gov>

Field Management (FM)

<http://www.fm.doe.gov>

Environment Safety and Health (EH)

<http://www.eh.doe.gov>

Advisory Boards

Defense Nuclear Facilities Safety Board (DNFSB)

<http://dr.tis.doe.gov>

Environmental Management Advisory Board (EMAB)

<http://em.doe.gov/stake/envir.html>

Others

National Parks Service

<http://www.nps.gov>

Environmental Protection Agency

<http://www.epa.gov>

Army Corps of Engineers

<http://www.usace.army.mil>

STATEMENT OF WORK DEFINITIONS

- "CO" shall mean the United States Department of Energy's duly authorized Contracting Officer.
- "Contractor" shall mean the party contracting with the United States Department of Energy in performance of this contract.
- "COR" shall mean the United States Department of Energy's duly authorized Contracting Officer's Representative(s).
- "DEAR" shall mean the Department of Energy Acquisition Regulations.
- "DOE" shall mean the United States Department of Energy or its authorized representative(s).
- "EM" shall mean the Office of the Assistant Secretary for Environmental Management.
- "ES&H" shall mean Environment, Safety and Health.
- "FAR" shall mean the Federal Acquisition Regulations.
- "FE" shall mean the Office of the Assistant Secretary for Fossil Energy.
- "FETC" shall mean the U.S. DOE Federal Energy Technology Center, located in Morgantown, West Virginia, and in Bruceton, South Park Township, Pennsylvania.
- "Field Office" shall mean any of the contractor's permanent business locations that are remote from the contractor's home office.
- "Government" shall mean the U.S. DOE or its duly authorized contracting and/or technical representative(s).
- "Home office" shall mean the contractor's permanent business office location.
- "ISM" shall mean Integrated Safety Management.
- "Off-Site" shall mean the contractor shall provide the specified service or work at a location not directly on FETC property, as authorized by the DOE CO; such location may be owned or leased by the U.S. DOE and fall under the program and/or administrative cognizance of FETC, or may be owned or leased by another Federal or State agency or other entity. "Off-Site" includes the contractor's local office in close proximity to FETC and all other contractor facilities remote from FETC.
- "On-Site" shall mean that the contractor shall reside and provide the specified service or work at FETC's Morgantown, West Virginia and Bruceton, South Park Township, Pennsylvania sites.
- "P3EA" shall mean Program, Product and Project Engineering and Analysis.
- "Product" shall mean an externally focused family of projects that contributes directly to the nation's well-being. Fluidized Bed Combustion, or FBC, is an example of a FETC technology product, one of the projects of which is the development of a hot-gas filter element. The Center for Acquisition and Business Excellence, or CAFE, is an example of a FETC service-oriented product, one of the projects of which is to perform cost assessments.
- "Program" shall mean a plan or system under which action may be taken toward a goal and that provides Congressional funds for a product, a family of products, or a family of projects that may crosscut products.
- "Project" shall mean a planned undertaking such as a definitely formulated piece of research.
- "RD&D" shall mean research, development and demonstration. This would include all research - starting at basic or advanced research and leading to demonstration.
- "Regional" shall mean the West Virginia and western Pennsylvania area.
- "Subcontractor" and "subcontractors" shall mean the party or parties to whom parts of the work are sublet by the contractor, including vendors.
- "T&E" shall mean technical and engineering.
- "Vendor" and "Vendors" shall mean the party or parties responsible for supplying material, components, equipment, or equipment items purchased by the Government's contractor or its subcontractors.

RELATED WORK PROCESSES

a. Performance Location

The contractor shall perform the services on-site at FETC, at a local office or home office of the contractor, and/or at other off-site locations in accordance with task orders issued under this contract. The contractor may utilize services, personnel, or other necessary facilities of its field offices or home office, and those of its subcontractors upon authorization.

b. Support to Multi-Organizational Teams

Task orders issued under this contract may require stand-alone task deliverables or expertise to support FETC teams and their higher-level products. Such teams may consist of Federal, contractor, and private- and public-sector representatives. In all cases, task orders will specifically delineate contractor responsibilities and outcome expectations.

c. Permits

The contractor shall obtain and maintain, as directed by the DOE CO, all necessary permits, licenses, and certificates required to execute this contract.

d. Identification Badges

The Government will provide all contractor and subcontractor employees associated with the performance of this contract identification badges processed through the DOE's security system. The contractor shall furnish all employee identification information required to process the badging of contractor and subcontractor employees in a manner to ensure timely badging of employees.

e. Classified Facilities and Security Clearances

Performance of portions of the statement of work require classified facilities and security clearances. Only those contractor employees with an approved DOE security clearance shall be permitted to support and have access to classified DOE activities under this contract. Classified work performed by the contractor or subcontractors in the performance of this contract shall be performed in classified facilities, as authorized by the DOE CO, by employees having the appropriate security clearances. When classified work is to be performed at Government classified locations, the Government will provide the necessary facilities and equipment. Some classified work will be performed under this contract at contractor-furnished classified facilities. The contractor shall provide sufficient classified facilities and equipment off-site to accommodate a minimum of five people performing classified work at any given time. The contractor-furnished classified facilities shall have classified computer capabilities meeting the requirements of DOE Orders and secure voice lines.

f. Environmental Safety and Health (ES&H)

The contractor shall implement provisions of this contract, entitled "*Environmental, Safety and Health – On-Site Service Contracts (May 1998)*" in its entirety for on-site work scope and in part as applicable to off-site work scope. The contractor shall also implement the principles and processes of Integrated Safety Management (ISM), as outlined in DOE P 450.4, entitled "*Safety Management Policy (October 15, 1996)*," and DOE G 450.4-1, entitled "*Integrated Safety Management System Guide, Volumes 1 and 2 (November 26, 1997)*," into the planning, budgeting, managing, executing and assessing of all work activities. The ISM's five-function process involves: defining the scope of work; analyzing the hazards; developing and implementing

controls; performing work safely, and ensuring performance. The ISM's seven guiding principles are: workforce responsibility and accountability; clear roles, responsibilities and authorities; competence commensurate with responsibilities; balanced priorities; identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization. In order to achieve cost-effective performance and to minimize differing and inconsistent requirements at FETC, the contractor's integration shall be consistent with FETC's own ISM and ES&H programs. For those services provided on-site, the contractor shall also provide resources for participation in FETC's emergency preparedness and response program.

CONTRACT REPORTING REQUIREMENTS CHECKLIST

Contract Title: Program, Product and Project Engineering and Analysis (P3EA) Services for the Federal Energy Technology Center

Contract No: DE-AM26-99FT40575

REPORT/PLAN	FORM NO.	REPORT FREQ.	NO. OF COPIES
A. GENERAL MANAGEMENT:			
<input checked="" type="checkbox"/> Quarterly Performance Self-Assessment Report	None	Q	•
<input checked="" type="checkbox"/> Status Report	None	M	•
<input checked="" type="checkbox"/> Summary Report	1332.2	M	•
B. SCHEDULE/LABOR/COST:			
<input checked="" type="checkbox"/> Cost Management Report	1332.9	M	•
<input checked="" type="checkbox"/> Labor Management Report	1332.8	M	•
<input checked="" type="checkbox"/> Wages and Benefits Reconciliation Report	None	Y	•
C. ES&H REPORTS:			
<input checked="" type="checkbox"/> ES&H Hot Line Report	None	A	•
<input checked="" type="checkbox"/> DOE/FETC ES&H Reports (DOE O 231.1, M 231.1-1, O 232.1)	See Orders and Manual	A	•
<input checked="" type="checkbox"/> Integrated Safety Management Plan (DOE 450.4)	See DOE Order	O**	•
D. EXCEPTION AND OTHER REPORTS:			
<input checked="" type="checkbox"/> Hot Line Reports (General)	None	A	•
<input checked="" type="checkbox"/> Property Inventories	See DEAR 945	---	•
<input checked="" type="checkbox"/> Subcontracting Report for Individual Contracts	294 (Rev. 1-90)	S	•
<input checked="" type="checkbox"/> Summary Subcontracting Report	295 (Rev. 1-90)	Y	•
<input checked="" type="checkbox"/> Staffing Report	None	M	•
<input checked="" type="checkbox"/> Quality Assurance and Quality Control (QA/QC) Plan	None	O	•
E. SPECIAL INSTRUCTIONS:			
<p>* Reports are to be distributed electronically, along with two hard copies, to a FETC-identified distribution list. If the submission involves a DOE Standard Form, the contractor may submit the requested information in a format of its own choosing, as long as the same information is given. The reports in this checklist apply to the contract in general. STATEMENTS OF WORK FOR TASKS AND SUBTASKS MAY REQUIRE OTHER SPECIFIC REPORTS AND/OR DELIVERABLES.</p> <p>** Plan is to be updated annually.</p> <p>*** See the following Description of Reports for details related to the eight property reports that are due.</p>			
FREQUENCY CODES			
A As necessary or required			
M Monthly; within 15 calendar days after the end of the report period			
O One time, within thirty calendar days after contract award			
Q Quarterly, within 20 calendar days after the end of the report period			
S Semiannually, within 20 calendar days after the end of the report period			
Y Yearly (see narrative descriptions of reports for further details)			

DESCRIPTION OF REPORTS

QUARTERLY PERFORMANCE SELF-ASSESSMENT REPORT

For all contract tasks and subtasks involved in an award-fee determination, the contractor is to provide a self-assessment of work performed during the previous quarter. This report is to include a comprehensive summary of the activities implemented and a self-assessment of performance based on technical performance, cost control, schedule, environment, safety and health and socio-economic criteria.

STATUS REPORT

The Status Report presents the contractor's narrative technical assessment of the work actually performed and the overall status of the various tasks and subtasks. Open items requiring action by either the contractor or DOE are noted in this report. The report also provides a summary assessment of the current situation, including forecast of the near future and the expected impact on task and/or subtask accomplishment. The report is to include a listing of the major accomplishment for each task and subtask in bullet form and, if applicable, a list of pertinent presentations and publications.

SUMMARY REPORT (DOE F 1332.2)

The Summary Report provides a concise, top-level synopsis of schedule, labor, and cost performance. Most data are presented graphically. The format permits rapid visual comparison of schedule, labor, and cost data. Three components are presented: a cost status graph, a labor status graph, and a milestone chart. The cost and labor graphs are presented on a cumulative basis. Planned and actual numerical data are presented for the specified period. Labor and cost variances are shown on a monthly and cumulative basis.

COST MANAGEMENT REPORT (DOE F 1332.9)

The Cost Management Report shows the cost status of the contract at the subtask, task and composite levels. Cost information is to be provided at the B&R (Budget and Reporting) and Cost Center level.

LABOR MANAGEMENT REPORT (DOE F 1332.8)

The Labor Management Report is a report of the status of labor resource utilization. This information is to be presented at the subtask, task and composite levels.

WAGES AND BENEFITS RECONCILIATION REPORT

The Wages and Benefits Reconciliation Report is to be submitted to comply with Clause B.5 of the contract. The contractor must report (1) the total labor hours billed per labor category, (2) the total wages and fringe benefits actually paid per individual employee within each labor category, and (3) the variance between the billed and actual wages and fringe benefits per labor category. **This report shall be submitted within ninety (90) days after completion of the contractor's and its subcontractors' fiscal years.** The data contained in this report shall be certified by the contractor as accurate, complete, and allowable in accordance with the cost principles of the Federal Acquisition Regulations.

ES&H HOT LINE REPORT

- A. The "ES&H Hot Line Report" is to be used to report an ES&H violation. The report must be submitted by the most rapid means available, usually electronic, and is to confirm telephone conversations with DOE representatives. Identification as an "ES&H Hot Line Report" serves notice

at each link in the delivery chain that speed in handling is required. The report must include:

1. Contractor's name and address
 2. Contract title and number
 3. Date
 4. Brief statement of problem or event
 5. Anticipated impacts
 6. Corrective action taken or recommended
- B. ES&H Hot Line Reports are to be used to document incidents such as those listed below:
1. Any non-compliance with the provisions of Clause H.25 ENVIRONMENT, SAFETY, AND HEALTH—ON-SITE SERVICE CONTRACTS is to be reported within three days, unless specified otherwise below.
 2. Any single fatality or injuries requiring hospitalization of five or more individuals is to be immediately reported.
 3. Any significant environmental permit violation is to be reported as soon as possible, but no later than 24 hours following the discovery of the incident.
 4. Other ES&H incidents that have the potential for visibility in the media are to be reported as quickly as possible, but no later than 24 hours following the discovery of the incident.
 5. Any failure resulting in damage to Government-owned equipment in excess of \$50,000 is to be reported as quickly as possible, but no later than 24 hours following the discovery of the failure.
 6. Any verbal or written Notice of Violation of any ES&H statutes arising from the performance of this contract is to be immediately reported.
 7. Any accidental spill or release that is in violation of any ES&H statutes arising from the performance of this contract is to be immediately reported.
 8. Any incident that causes a significant process- or hazard-control-system failure, or is indicative of one that may lead to any of the above-defined incidents, is to be reported as soon as possible, and must be reported within 5 days of discovery.
 9. When an event results in the need to issue a written or verbal statement to the local media, the statement is to be cleared first, if possible, by FETC's Public Relations Officer and coordinated with the COR.

DOE/FETC ES&H REPORTS IN SUPPORT OF DOE/FETC'S ENVIRONMENT, SAFETY, AND HEALTH REPORTING REQUIREMENTS

- A. The contractor shall provide information and reports to FETC in support of DOE's reporting requirements contained in DOE O 231.1, ENVIRONMENT, SAFETY, AND HEALTH REPORTING, DOE M 231.1-1, ENVIRONMENT, SAFETY, AND HEALTH REPORTING MANUAL, and DOE O 232.1, OCCURRENCE REPORTING AND PROCESSING OF OPERATIONS INFORMATION. Content, form, schedule, and applications are provided in the DOE Orders.
- B. Data, information, or reports include, but are not limited to, the following areas (if applicable):

1. **Work-related fatalities, injuries, and illnesses among contractor employees arising out of work performed primarily at DOE-owned or -leased facilities**
 2. **Work-hours and vehicle usage**
 3. **Estimated property valuation**
 4. **Interim exposure data reporting**
 5. **Annual exposure data reporting**
 6. **Radiological exposure to individuals**
 7. **Annual summary of fire damage**
 8. **Epidemiologic analyses—excess injuries and illnesses**
 9. **Occupational, safety, and health information in support of epidemiological studies conducted by external organizations**
 10. **Quarterly DOE ES&H performance indicator data**
 11. **Annual site environmental reports.**
- C. **As needed, information reports associated with the notification, recording and reporting requirements for accidents and/or incidents shall be prepared in accordance with 29 CFR 1904 and 1910. The Contracting Officer or his/her representative shall be provided with copies of all OSHA-required documentation within ten days of the associated accident and/or incident.**
- D. **On a quarterly basis, the contractor shall report on the following FETC environment, safety, and health indicators (if applicable):**
1. **Recordable Injury/Illness Rate (total number of OSHA-defined recordable injuries and illnesses/total hours worked)**
 2. **Lost Workday Case Rate (total number of OSHA-defined lost workday cases/total hours worked)**
 3. **Regulated Pollutant Effluent (total pounds of permitted, regulated pollutants in air and water releases)**
 4. **Hazardous Waste Generated (total cubic feet of hazardous waste shipped)**
 5. **Corrective Maintenance Backlog (total number of corrective maintenance items pending over 90 days old and total number of corrective maintenance items due)**
 6. **Preventive Maintenance Backlog (total number of preventive maintenance items pending over 90 days old and total number of preventive maintenance items due)**

INTEGRATED SAFETY MANAGEMENT PLAN

An Integrated Safety Management Implementation Plan shall be developed and submitted by the contractor. The plan shall describe how the offeror will implement ISM philosophy, as outlined in DOE P

450.4, Safety Management Policy, October 15, 1996, and Integrated Safety Management System Guide, DOE G 450.4-1, Volumes 1 and 2, November 26, 1997, into the planning, budgeting, execution, and assessment of work activities. The plan shall provide (1) a process approach to the integration of ISM's five steps (i.e., defining the scope of work, analyzing the hazards, developing and implementing controls, performing work safely, and ensuring performance) into its everyday work activities; (2) a specific management approach to demonstrate ISM's seven guiding principles (i.e., workforce responsibility and accountability; clear roles, responsibilities and authorities; competence commensurate with responsibilities; balance priorities; identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization); and (3) a discussion on how the execution of the offeror's plan will successfully and cost-effectively integrate with FETC's own ISM and ES&H programs for on-site work to be conducted. An annual update is also required.

HOT LINE REPORTS (GENERAL)

A general "Hot Line Report" is to be used to report information of a critical nature to DOE management. The report shall be submitted by the most rapid means available, usually electronic, and should normally confirm telephone conversations with DOE representatives. Identification as an "Hot Line Report" serves notice at each link in the delivery chain that speed in handling is required. The report must include:

1. Contractor's name and address
2. Contract title and number
3. Date
4. Brief statement of problem or event
5. Anticipated impacts
6. Corrective action taken or recommended

PROPERTY INVENTORIES

1. High Risk Property Report
Frequency—Annually
2. Monthly Motor Vehicle Use Records (FETC 4440.3)
Frequency—Monthly
3. Report of Physical Inventory of Permanently Affixed Plant
Frequency—Not less than once every 10 years
Description and Format—See FAR 45.5 and DEAR 945.5
4. Report of Physical Inventory of Capital Equipment
Frequency—Not less than once every 2 years
Description and Format—See FAR 45.5 and DEAR 945.5 and FETC Handbook entitled "Management of Government Property in the Possession of Off-site Contractors"
5. Report of Physical Inventory of Sensitive Items
Frequency—Not less than annually

Description and Format—See FAR 45.5/6 and DEAR 945.5/6 and FETC Handbook entitled "Management of Government Property in the Possession of Off-site Contractors"

6. Report of Termination or Completion Inventory

Frequency—Immediately upon contract completion or termination

Description and Format—See FAR 45.5/6 and DEAR 945.5/6. Use form enclosed with FETC Handbook.

7. Report of Contractor's Property Management System

Frequency—One time, within six months after contract award

Description and Format—This report is to describe the contractor's comprehensive written property management system. It must address the contractor's written system for controlling, protecting, preserving, and maintaining all Government property. The report format must be consistent with the contractor's system and must as a minimum enable comprehensive evaluation by the Government.

8. Annual Report of Government-Owned Property

Frequency—annually, due October 15

Description and Format—See FAR 45.505-14 and FETC Handbook entitled "Management of Government Property in the Possession of Off-site Contractors"

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS

The form SF 294 is to be properly filled in and submitted semiannually. This report is due by the 30th day of the month following the close of the reporting periods (due April 30 and October 30).

SUMMARY SUBCONTRACTING REPORT

The form SF 295 is to be properly filled in and submitted annually. This report is due 30 days after the close of the Government fiscal year (due October 30).

STAFFING REPORT

The required staffing data, which are to represent the workforce distribution as of the last day of the preceding month, include (1) a headcount of all on-site contractor personnel being paid using Fossil Energy funds, and (2) full-time equivalent personnel (to be reported as working on activities funded by various funding agencies, subdivided by location according to a format to be provided by FETC).

QUALITY ASSURANCE AND QUALITY CONTROL (QA/QC) PLAN

Within 30 days after award the contractor must deliver a draft QA/QC Plan for the contract. Fifteen days will be allotted for review and approval. The Plan shall define the QA/QC system and organizational or operational structure proposed for use by the contractor to achieve consistency with the most recent version of DOE Order 5700.6 (Quality Assurance), conformity to FETC's QA/QC Program, and assurances that all work performed for FETC uses QA/QC measures as appropriate to:

1. Achieve accuracy, precision, and reproducibility of data delivered under the contract

2. **Control experimental operations using accepted technical standards, instructions, and other appropriate means commensurate with the complexity and risk of the work**
3. **Identify, control, and maintain components, equipment, facilities, hardware, and material**
4. **Control handling, storage, shipping, cleaning, and preservation to minimize or prevent damage, loss, or deterioration**
5. **Control calibration, maintenance, accountability, and use of measuring and testing equipment used for monitoring and data collection**
6. **Ensure that designs use sound engineering/scientific principles and appropriate standards, and demonstrate that equipment and processes perform as intended**
7. **Ensure that purchased items and services meet established specifications and requirements**
8. **Incorporate inspections as appropriate**
9. **Continually improve the quality of the work done for DOE through the improvement of work practices guided by internal performance assessments**

**PERFORMANCE EVALUATION PLAN
FEDERAL ENERGY TECHNOLOGY CENTER**

A. BACKGROUND

1. This plan covered the administration of the award fee provisions of the contract. It is intended as a means to:
 - a. Implement the contract's Performance Evaluation Plan;
 - b.. Document how performance during a specific award fee period will be evaluated and fee determined;
 - c. Assure that the contractor's performance is objectively evaluated in a fair and consistent manner; and
 - d. Afford the contractor an opportunity to earn fee commensurate with performance expended in achieving contract deliverables, objectives, and goals. Optimum performance represents the most favorable degree of performance obtainable given the contractor's resources.
2. Each award fee evaluation period shall be six months in total duration.
3. The following matters, among others, are covered in the contract:
 - a. The term of the contract is for three (3) years, with two 12-month options.
 - b. The estimated cost and award fee pool are subject to equitable adjustments that may result from contract changes or modifications.
 - c. The award fee will be determined periodically by the Fee Determination official (FDO) in accordance with this plan.
 - d. Award fee determinations are not subject to the "Disputes" clause of this contract.
 - e. The FDO may unilaterally make changes to this plan.

B. STRUCTURE FOR AWARD FEE ADMINISTRATION

The following structure is established for administration of the performance award fee provisions of the contract.

1. Fee Determination Official (FDO)
 - a. The FDO is the Director of the Federal Energy Technology Center (FETC) and Head of the Contracting Activity.
 - b. Primary responsibilities of the FDO include:
 - (1) Determining the contractor's evaluated award fee for each evaluation period.

(2) Authorizing changes to this plan.

2. Performance Evaluation Board (PEB)

a. Chairman and Membership

Designations, structure, and responsibilities to be provided to the contractor during transition. The Government may change the chairman and membership without advance notice to the contractor.

b. Performance Raters (PR)

Designations and responsibilities to be provided to the contractor during transition. The Government may change the chairman and membership without advance notice to the contractor.

C. EVALUATION OF THE CONTRACTOR'S PERFORMANCE

1. Rating Plan

a. The contractor's performance shall be evaluated and rated according to this Performance Evaluation Plan. The Evaluation Criteria, Evaluation Periods, Maximum Available Award Fee for each Evaluation Period, the Grading Table, and the Award Fee Conversion Chart are attached as indicated below.

	<u>ITEM</u>	<u>EXHIBIT</u>
1.	Evaluation Periods and Maximum Available Award Fee Schedule	E-1
2.	Evaluation Criteria	E-2
3.	Grading Table	E-3
4.	Award Fee Conversion Chart	E-4

b. Exhibit E-4 is a basis for translating performance points to an award fee for arriving at a recommendation for the FDO's consideration regarding the amount of award fee earned. In no way do they impute arithmetical precision or a requirement that the FDO accept this recommendation as a determination of the amount of award fee warranted for the contractor's performance during a rating period.

2. Award Fee Determination Process

Presented below are process steps that will be followed to evaluate and determine the award fee due to the contractor, based on performance.

a. The implementation plan is as follows:

- (1) A post-award contract briefing will be held shortly after contract award to review contract provisions and the Performance Evaluation Plan requirements. This meeting will be attended by FETC and contractor personnel.
- (2) At the end of each evaluation period, the contractor shall submit a self-evaluation of performance for each period under consideration.

- (3) Following the close of each evaluation period, the Chairman of the Performance Evaluation Board will present evaluation findings to the contractor.
- (4) The contractor will be given an opportunity to submit comments after the FETC evaluation findings are presented.
- (5) The report of findings, inclusive of contractor findings, will be provided to the FDO. Upon approval by the FDO, this Award Fee Determination Report determines the Contractor's fee for the performance period.
- (6) The FDO notifies the Contractor, the PEB Chairman, and the Contracting Officer of the fee determination in writing.
- (7) The contractor attaches the FDO-signed Award Fee Determination Report and FDO's fee determination letter to a voucher and submits this invoice to the Government for payment of its award fee.
- (8) The Government processes the contractor's invoice and the fee is paid.

D. REVISING THE PERFORMANCE EVALUATION PLAN

1. Right to Make Unilateral Changes to the Performance Evaluation Plan

Any matters covered in this plan not otherwise requiring mutual agreement under the contract, may be changed unilaterally by the FDO up to fifteen days prior to the beginning of an evaluation period.

2. Bilateral Changes to the Performance Evaluation Plan

Bilateral changes to the Performance Evaluation Plan may be made at any time during the performance evaluation period.

EXHIBIT E-1 TO THE PERFORMANCE EVALUATION PLAN
EVALUATION PERIODS AND MAXIMUM AVAILABLE FEE

**FEE
PERIOD**

<u>EVALUATION PERIOD</u>		<u>AVAILABLE AWARD FEE</u>
<u>BEGINNING DATE</u>	<u>ENDING DATE</u>	

CONTRACT'S BASE PERIOD OF PERFORMANCE (36 MONTHS)

1	07/01/99	12/31/99	\$ TBD
2	01/01/00	06/30/00	TBD
3	07/01/00	12/31/00	TBD
4	01/01/01	06/30/01	TBD
5	07/01/01	12/31/01	TBD
6	01/01/02	06/30/02	TBD
			Total= \$TBD

FIRST OPTION PERIOD OF PERFORMANCE (12 MONTHS)

7	07/01/02	12/31/02	\$ TBD
8	01/01/03	06/30/03	TBD
			Total= \$TBD

SECOND OPTION PERIOD OF PERFORMANCE (12 MONTHS)

9	07/01/03	12/31/03	\$ TBD
10	01/01/04	06/30/04	TBD
			Total= \$TBD

EXHIBIT E-2 TO PERFORMANCE EVALUATION PLAN
PERFORMANCE AREAS AND EVALUATION CRITERIA

The performance areas to be evaluated are identified below. The evaluation criteria for each area are as indicated.

Performance Area Number	Evaluation Criteria	Criterion Weight
1	Technical Performance	40%
2	Cost Control	20%
3	Schedule	20%
4	Environment, Safety and Health	15%
5	Socio-Economic	5%
	Total	100%

CRITERION 1 - TECHNICAL TASK AND SUBTASK PERFORMANCE

The contractor's performance for Criterion 1 shall be evaluated on the basis of the following factors:

- a. Quality of Work Product - The demonstrated ability of the Contractor to produce technically correct and error-free task or subtask deliverables.
- b. Problem Resolution - The demonstrated ability of the contractor to:
 - (1) identify potential problems in a timely manner; and
 - (2) to promptly remedy, correct, or eliminate undesirable conditions that arise during task or subtask performance.
- c. Coordination - The demonstrated ability of the contractor to effectively coordinate on-site and off-site support of the contractor, its principal subcontractors, and its vendors or lower tier subcontractors to accomplish all assigned task to subtask objectives as authorized.
- d. Value Engineering - The contractor's demonstrated innovation in recommending actions or plans for DOE approval which substantially increase the value of support services through cost reduction and/or improvement of results.

CRITERION 2- COST CONTROL

The contractor's performance for Criterion 2 shall be evaluated on the basis of the following factors:

- a. Financial Reporting - The demonstrated ability to provide accurate and timely cost data, contractual reports, invoices, plans, and proposals per the contract's terms and conditions.
- b. Contract Notifications - The demonstrated ability of the contractor to comply to the contract's term and conditions affecting contract cost (e.g., issuance of limitation of cost letters on a task and subtask basis, etc.).
- c. Cost Management - The demonstrated ability of the contractor to manage and achieve contract performance goals within authorized and funded task and subtask cost plans.

- d. **Cost Effectiveness - Accomplishment of task and subtask objectives at cost below planned cost and/or the development and implementation of practices and processes resulting in cost efficiencies.**
- e. **Manpower Management - The demonstrated ability of the contractor to manage direct labor and other direct cost as identified in the task's or subtask's authorized plan.**

CRITERION 3 - SCHEDULE

The contractor's performance for Criterion 3 shall be evaluated on the basis of the following factors:

- a. **Timeliness - The demonstrated ability of the contractor to achieve established milestone schedules within the Contractor estimated and DOE authorized cost and manpower plans.**
- b. **Responsiveness - The demonstrated ability of the contractor to adhere to and implement the contract's ordering procedures.**
- c. **Corrective Action - The demonstrated ability of the contractor to initiate and implement corrective action to effectively mitigate schedule impact.**

CRITERION 4 - ENVIRONMENT, HEALTH, AND SAFETY

The contractor's performance for Criterion 4 shall be evaluated on the basis of the following factors:

- a. **Health - The contractor's demonstrated compliance to contractually identified Federal, state, and local health requirements.**
- b. **Safety - The contractor's demonstrated compliance to contractually identified Federal, state, and local safety requirements and DOE approved plans.**
- c. **Environment - The contractor's demonstrated compliance to contractually identified Federal, state, and local environmental requirements and DOE approved plans.**
- d. **Integrated Safety Management (ISM) - The contractor's demonstration of ISM's seven principles and five functions in the planning, budgeting, execution, and improvement of its management and work activities.**

CRITERION 5 - SOCIOECONOMIC

The contractor's performance for Criterion 5 shall be evaluated on the basis of the demonstrated ability to achieve or exceed its goals identified in its DOE approved Subcontracting Plan.

EXHIBIT E-3 TO PERFORMANCE EVALUATION PLAN

GRADING TABLE

The FDO will perform an in-depth review of the ratings recommended by the PEB Chairman, on a task basis, in the PEB Report in determining the contractor's earned award fee for a specific fee period. The following rating categories and definitions shall be used in assessing the contractor's performance.

Adjectival Rating	Description Points	Performance Point Range
Unsatisfactory	Significant deficiencies causing severe impacts on mission capabilities exist. Performance at this level in any evaluation criterion addressed by this Plan may result in the Fee Determination Official withholding all the available award fee for that particular evaluation period.	0-62
Marginal	Performance is less than expected. No notable achievements exist; however, some notable deficiencies exist, or any notable achievements which exist are more than offset by significant or notable deficiencies.	63-69
Satisfactory	Performance meets expected levels. Minimum standards are exceeded and "good practices" are evident in contract operations. Notable achievements or notable deficiencies may exist.	70-84
Good	Performance exceeds expected levels and some notable achievements exist. Although some notable deficiencies may exist, no significant deficiencies exist.	85-92
Outstanding	Performance substantially exceeds expected levels of performance. Several significant or notable achievements exist (e.g., utilized exceptional approaches or methodologies to interpret or satisfy task or subtask requirements). There are no notable deficiencies in the contractor's performance.	93-100

EXHIBIT E-4 TO AWARD FEE DETERMINATION PLAN

AWARD FEE CONVERSION CHART

The following chart device is for use in converting weighted performance points into percentages of available award fee.

PERFORMANCE POINTS	PERCENT OF AVAILABLE AWARD FEE
100	100.0
99	98.0
98	96.0
97	94.0
96	92.0
95	90.0
94	88.0
93	86.0
92	84.0
91	82.0
90	80.0
89	78.0
88	76.0
87	74.0
86	72.0
85	70.0
84	68.0
83	67.0
82	66.0
81	65.0
80	64.0
79	63.0
78	62.0
77	61.0
76	60.0
75	59.0
74	58.0
73	57.0
72	56.0
71	55.0
70	53.0
69	52.0
68	44.0
67	36.0
66	28.0
65	20.0
64	12.0
63	8.0
62 and below	0.0

RESERVED

ORGANIZATIONAL CONFLICTS OF INTEREST

Requirements

In compliance with Public Laws 93-577 and 93-275, and Subpart 909.5 of the Department of Energy Acquisition Regulation which implements these laws, your proposal must provide the information and assurances called for by the forms provided in this section.

The offeror must submit (as a part of Volume I, Business and Management Proposal) the following documents from each of the entities¹ listed below:

1. Either the Organizational Conflicts of Interest (OCI) (a) Representation Statement or (b) the OCI Disclosure Statement. If the OCI Disclosure Statement is signed, provide an attachment showing the information required.
2. The OCI questionnaire; if you answer any question "yes," provide an attachment showing the information requested.
3. If applicable, a copy of the most current 10K report, submitted to the Securities and Exchange Commission (SEC), and the most current annual report.

Notice

Apart from other remedies allowed by law or award, any nondisclosure or misrepresentation of relevant facts required by the OCI regulations may result in the Department disqualifying the violator from future Department awards.

Discussion

It is the policy of the Department of Energy to identify and avoid or mitigate organizational conflicts of interest before entering into contracts, agreements, and other arrangements.

Generally, to determine whether an organizational conflict of interest exists, the Department considers these two questions:

¹ The types of entities or individuals which are required to complete the forms listed above are as follows:

1. The prime contractor.
2. The subcontractor(s) [unless the subcontractor(s) is only providing supplies] and consultants at every tier.
3. All affiliates of the foregoing.
4. Any entities owned or represented by the chief executives or directors of: the prime contractor, any of the subcontractors, except for those only providing supplies; and any of the consultants.
5. Chief executives and directors -- if they will be involved in performing the proposed work of: the prime contractor, the subcontractors at every tier (except for subcontractors which are only providing supplies); consultants at every tier; and all affiliates of the foregoing.

1. Are there conflicting roles which might bias an offeror's judgment in relation to its work for the Department?
2. Is the participant being given an unfair competitive advantage based on the performance of the award?

Department personnel will examine with particular care proposed work that calls for advising, consulting, or evaluating in areas that will directly influence Departmental decisions about future procurements, R&D programs, production, and regulatory activities.

Using common sense and good business judgment, the Contracting Officer will determine whether an organizational conflict of interest exists after examining:

1. All relevant facts submitted by the offeror;
2. The statement of work; and,
3. Information gained from other sources.

If a conflict does exist, the Contracting Officer:

1. Shall avoid any conflicts by including appropriate conditions in the award; or
2. Shall disqualify the offeror from award; or
3. May award the agreement if the Secretary (or Secretary's designee) determines that awarding the agreement —despite the conflict — is in the best interest of the United States. Circumstances justifying such a determination include situations where "the public exigency will not otherwise permit" and situations where the work or services cannot otherwise be obtained. In these cases, clauses are included in the award to mitigate the conflict to the extent feasible and a notice of the award is published in the Federal Register.

Definitions

1. The term "organizational conflicts of interest" means that a relationship or situation exists whereby an offeror (including chief executives and directors, to the extent that they will or do become involved in the performance of the award, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that either directly or indirectly (through a client contractual, financial, organizational, or other relationship) may relate to the work to be performed under a Department award and which (1) may diminish its capacity to give impartial, technically sound, and objective assistance or advice, or (2) may result in it being an unfair competitive advantage. It does not include the normal flow or benefits from the performance of the award.
2. The term "affiliates" means business concerns or individuals which have a relationship where, either directly or indirectly, one concern or individual controls or can control another, or when a third party controls or can control both (see 48 CFR 9.403).
3. The term "energy concern," as defined by Public Law 95-91, Section 601(b), includes:
 - A. Any person significantly engaged in the business of developing, extracting, producing, refining, transporting by pipeline, converting into synthetic fuel, distributing, or selling minerals for use as an energy source, or in the generation or transmission of energy from such minerals or from wastes or renewable resources;
 - B. Any person holding an interest in property from which coal, natural gas, crude oil, nuclear material, or a renewable resource is commercially produced or obtained;

- C. Any person significantly engaged in the business of producing, generating, transmitting, distributing, or selling electric power;
- D. Any person significantly engaged in development, production, processing, sale, or distribution of nuclear materials, facilities, or technology; and
- E. Any person:
 - (1) Significantly engaged in the business of conducting research, development, or demonstration related to an activity described in Paragraphs (A), (B), (C), (D); or
 - (2) Significantly engaged in conducting such research, development, or demonstration with financial assistance under any Act the functions of which are vested in or delegated or transferred to the Secretary of the Department of Energy.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

PROPERTY

I. Contractor Acquired Equipment

None

II. Government Furnished Property

1. Standard office equipment that will enable office workers stationed on-site at the Morgantown and Pittsburgh sites to perform their duties in an effective and efficient manner. (includes desks, computer tables, chair(s), bookcase(s), filing cabinet(s), computers and a limited number of calculators; computers are 486 and/or pentium computers with access to personal or network laser printer)
2. Tools and equipment required to perform assigned tasks consistent with the standards for the trade. (work performed in non-office environments)

NOTE: A detailed list of Government Furnished Property will be provided to the contractor during transition. The detailed list will be incorporated into the contract upon contractor verification.

FETC Environment, Safety, and Health and Related Standards

10 CFR 1021 CEQ Implementing Procedures
10 CFR 1046 Subpart B Physical Protection of Security Interests
10 CFR 20 Radiation Protection Standards
10 CFR 20.202 Personnel Monitoring
10 CFR 31 General Domestic Licenses
10 CFR 71 Packaging of Radioactive Materials for Transport
10 CFR 835 Occupational Radiation Protection
10 CFR 860 Trespass to Land Owned/Lease by the US Government
15 USC 2601 Asbestos
16 USC 1531 Endangered Species Act
16 USC 431-433 Antiquities Act
16 USC 461-467 Historic Sites Act
16 USC 469-469c Reservoir Salvage Act
16 USC 470 Archaeological Resource Protection Act
18 USC Section 841-848 Use or Threat of Use of Explosives
21 CFR 101
21 CFR 1020 Performance Standards for Ionizing Radiation
21 CFR 1030 Performance Standards for Microwave and Radio Frequencies
21 CFR 1040 Commercial Laser Devices
21 CFR 1040 Performance Standards for Light-Emitting Products
21 CFR 1040.10 Laser Products
21 CFR 1040.11 Specific Purpose Laser Products
21 CFR 1040.30 High Intensity Mercury Vapor Discharge Lamps
21 CFR 1050 Performance Standards for Sonic, Infrasonic and Ultrasonic Devices
28 CFR 36 Americans With Disabilities Act
29 CFR 1904 Recordkeeping and Reporting
29 CFR 1910 Subpart I Personal Protective Equipment
29 CFR 1910 Subpart S - Electrical
29 CFR 1910.1000 Air Contaminants
29 CFR 1910.1001 Asbestos
29 CFR 1910.101 Compressed Gases
29 CFR 1910.102 Acetylene
29 CFR 1910.103 Hydrogen
29 CFR 1910.1030 Occupational Exposure to Bloodborne Pathogens
29 CFR 1910.104 Oxygen
29 CFR 1910.106 Flammable and Combustible Liquids
29 CFR 1910.107 Spray Finishing Using Flammable and Combustible Mat
29 CFR 1910.107 Subpart H - Hazardous Materials
29 CFR 1910.108 Dip Tanks Containing Flammable or Combustible Liquids
29 CFR 1910.110 Storage and Handling of Liquefied Petroleum Gases
29 CFR 1910.112 Ropes, Chains and Slings
29 CFR 1910.119 Process Safety Management of Highly Hazardous Chemicals
29 CFR 1910.12 Construction work
29 CFR 1910.120 HAZWOPER
29 CFR 1910.1200 Hazard Communication
29 CFR 1910.132 General Requirements for PPE
29 CFR 1910.133 Eye and Face Protection
29 CFR 1910.134 Respiratory Protection

29 CFR 1910.135 Head Protection
29 CFR 1910.136 Foot Protection
29 CFR 1910.137 Electrical Protective Equipment
29 CFR 1910.138 Hand Protection
29 CFR 1910.141 Sanitation
29 CFR 1910.145 Specifications for Accident Prevention Signs
29 CFR 1910.1450 Occupational Exposures to Hazardous Chemicals in La
29 CFR 1910.146 Permit Required Confined Spaces
29 CFR 1910.147 Control of Hazardous Energy (lockout/tagout)
29 CFR 1910.151 Medical Services and First Aid
29 CFR 1910.154 Accident Prevention
29 CFR 1910.155 Fire Protection
29 CFR 1910.157 Portable Fire Extinguishers
29 CFR 1910.158 Standpipe and Hose Systems
29 CFR 1910.159 Automatic Sprinkler Systems
29 CFR 1910.160 Fixed extinguishing systems, general
29 CFR 1910.164 Service, maintenance and testing (fire protection)
29 CFR 1910.165 Employee Alarms
29 CFR 1910.169 Air Receivers
29 CFR 1910.176 Material Handling - General
29 CFR 1910.178 Powered Industrial Trucks
29 CFR 1910.179 Overhead and Gantry Cranes
29 CFR 1910.180 Crawler Locomotive and Truck Cranes
29 CFR 1910.181 Derricks
29 CFR 1910.183 Helicopters
29 CFR 1910.184 Slings
29 CFR 1910.194 Ventilation
29 CFR 1910.20 Access to Employee Exposure and Medical Records
29 CFR 1910.21 Definitions (walking surfaces)
29 CFR 1910.212 General Requirements for All Machines
29 CFR 1910.213 Woodworking Machinery Requirements
29 CFR 1910.214 Cooperage Machinery
29 CFR 1910.215 Abrasive Wheel Machinery
29 CFR 1910.216 Mills and Calendars in the Rubber and Plastics Indu
29 CFR 1910.217 Mechanical Power Presses
29 CFR 1910.218 Forging Machines
29 CFR 1910.219 Mechanical Power Transmission Apparatus
29 CFR 1910.22 General Requirements (walking surfaces)
29 CFR 1910.23 Guarding Floor and Wall Openings and Holes
29 CFR 1910.24 Fixed Industrial Stairs
29 CFR 1910.242 Hand and Portable Powered Tools and Equipment, Gene
29 CFR 1910.243 Guarding of Portable Powered Tools
29 CFR 1910.244 Other Portable Tools and Equipment
29 CFR 1910.25 Portable Wood Ladders
29 CFR 1910.250 General Requirements for Storage
29 CFR 1910.252 General Requirements (welding, cutting, brazing)
29 CFR 1910.253, Oxygen-fuel gas Welding and Cutting
29 CFR 1910.254 Arc Welding and Cutting
29 CFR 1910.255 Resistance Welding
29 CFR 1910.26 Portable Metal Ladders
29 CFR 1910.268 Telecommunications
29 CFR 1910.269 Electric Power Generation, Transmission, and Distri
29 CFR 1910.27 Fixed Ladders
29 CFR 1910.28 Safety Requirements for Scaffolding
29 CFR 1910.29 Manually Propelled Mobile Ladder Stands and Scaffold
29 CFR 1910.30 Other Working Surfaces

29 CFR 1910.302 Electric Utilization Systems
29 CFR 1910.303 General Requirements (electrical)
29 CFR 1910.304 Wiring Design and Protection
29 CFR 1910.305 Wiring Methods, Components, and Equipment for Generators
29 CFR 1910.306 Specific Purpose Equipment and Installations
29 CFR 1910.307 Hazardous (classified) Locations
29 CFR 1910.308 Special Systems
29 CFR 1910.331 Scope of Safety Related Work Practices (electrical)
29 CFR 1910.333 Selection and Use of Work Practices (electrical)
29 CFR 1910.335 Safeguards for Personnel Protection (electrical)
29 CFR 1910.36 General Requirements for Means of Egress
29 CFR 1910.37 Means of Egress, General
29 CFR 1910.38 Evacuation, Accountability During Emergencies
29 CFR 1910.41 Lighting
29 CFR 1910.66 Powered Platforms for Building Maintenance
29 CFR 1910.67 Vehicle-mounted Elevating and Rotating Work Platform
29 CFR 1910.68 Manlifts
29 CFR 1910.94 Ventilation
29 CFR 1910.95 Occupational Noise Exposure
29 CFR 1910.96 Ionizing Radiation
29 CFR 1910.97 Nonionizing Radiation
29 CFR 1917.16 Elevators and Escalators
29 CFR 1926.403 General Requirements (electrical)
29 CFR 1926 Subpart E Personal Protective Equipment and Life Saving
29 CFR 1926 Subpart K - Electrical
29 CFR 1926.100 Head Protection
29 CFR 1926.1000-1002 Subpart W - Rollover Protective Structures; Overhead Protection
29 CFR 1926.1000-1003 Rollover Protective Structure; Overhead Protection
29 CFR 1926.101 Hearing Protection
29 CFR 1926.102 Eye and Face Protection
29 CFR 1926.103 Respiratory Protection
29 CFR 1926.104 Safety Belts, Lifelines, and Lanyards
29 CFR 1926.105 Safety Nets
29 CFR 1926.1051 Subpart X - Stairways and Ladders
29 CFR 1926.1100 Toxic and Hazardous Substances
29 CFR 1926.1101 Asbestos
29 CFR 1926.150 Fire Protection
29 CFR 1926.151 Fire Prevention
29 CFR 1926.152 Flammable and Combustible Liquids
29 CFR 1926.154 Temporary Heating Devices
29 CFR 1926.157 Fixed Extinguishing Systems, Gaseous Agent
29 CFR 1926.158 Fire Detection Systems
29 CFR 1926.159 Employee Alarm Systems
29 CFR 1926.16 Rules of Construction
29 CFR 1926.20 General Safety and Health Provisions
29 CFR 1926.25 Housekeeping
29 CFR 1926.250 General Requirements for Storage
29 CFR 1926.251 Rigging Equipment for Material Handling
29 CFR 1926.252 Disposal of Waste Materials
29 CFR 1926.26 Illumination
29 CFR 1926.27 Sanitation
29 CFR 1926.300 General Requirements (handtools)
29 CFR 1926.301 Hand tools
29 CFR 1926.302 Power Operated Hand Tools
29 CFR 1926.303 Abrasive Wheels and Tools
29 CFR 1926.304 Woodworking Tools

29 CFR 1926.305 Jacks
29 CFR 1926.306 Air Receivers
29 CFR 1926.307 Mechanical Power Transmission Apparatus
29 CFR 1926.34 General Safety and Health Provisions
29 CFR 1926.350 Gas Welding and Cutting
29 CFR 1926.351 Arc Welding and Cutting
29 CFR 1926.352 Fire Prevention (welding)
29 CFR 1926.353 Ventilation and Protection in Welding, Cutting, and
29 CFR 1926.354 Welding, Cutting, and Heating in Ways of Preservati
29 CFR 1926.400 Introduction (electrical)
29 CFR 1926.404 Wiring Design and Protection
29 CFR 1926.405 Wiring Methods, Components, and Equipment for Gener
29 CFR 1926.406 Specific Purpose Equipment and Installations
29 CFR 1926.407 Hazardous (classified) Locations
29 CFR 1926.408 Special Systems
29 CFR 1926.416 General Requirements (work practices)
29 CFR 1926.417 Lockout and Tagging of Circuits
29 CFR 1926.441 Batteries and Battery Charging
29 CFR 1926.451 Scaffolding
29 CFR 1926.453 Manually Propelled Mobile Stands and Scaffolds
29 CFR 1926.500 Floor and Wall Openings
29 CFR 1926.501 Duty to Have Fall Protection
29 CFR 1926.502 Fall Protection Criteria and Systems
29 CFR 1926.503 Training Requirements
29 CFR 1926.51 Sanitation
29 CFR 1926.52 Occupational Noise Exposure
29 CFR 1926.53 Ionizing Radiation
29 CFR 1926.54 Nonionizing Radiation
29 CFR 1926.55 Gases, vapors, fumes, dusts and mists
29 CFR 1926.550 Cranes and Derricks
29 CFR 1926.551 Helicopters
29 CFR 1926.552 Material Hoists, Personnel Hoists and Elevators
29 CFR 1926.553 Base-mounted Drum Hoists
29 CFR 1926.554 Overhead Hoists
29 CFR 1926.555 Conveyors
29 CFR 1926.556 Aerial Lifts
29 CFR 1926.56 Illumination
29 CFR 1926.57 Ventilation
29 CFR 1926.58 Asbestos
29 CFR 1926.59 Hazard Communication
29 CFR 1926.60 Methyleneedianiline
29 CFR 1926.600 Equipment
29 CFR 1926.601 Motor Vehicles
29 CFR 1926.602 Material Handling Equipment
29 CFR 1926.603 Pile Driving Equipment
29 CFR 1926.604 Site Clearing
29 CFR 1926.62 Lead
29 CFR 1926.65 HAZWOPR
29 CFR 1926.651 Excavations
29 CFR 1926.652 Earthmoving Equipment
29 CFR 1926.700-800 Subpart Q, R, S, T - Construction Regulations
29 CFR 1926.800 Underground Construction
29 CFR 1926.803 Compressed Air
29 CFR 1926.850 Preparatory Operations
29 CFR 1926.851 Stairs, Passageways, and Ladders
29 CFR 1926.854 Removal of Walls, Masonry Sections, Chimneys

29 CFR 1926.855 Manual removal of Floors
29 CFR 1926.856 Removal of Walls, Floors, and Materials with Equipm
29 CFR 1926.858 Removal of Steel Construction
29 CFR 1926.859 Mechanical Demolition
29 CFR 1926.95 Criteria for Personal Protective Equipment
29 CFR 1926.950 General Requirements (power transmission/distributi
29 CFR 1926.951 Subpart V - Power Transmission and Distribution
29 CFR 1926.952 Material Handling
29 CFR 1926.953 Materials Handling
29 CFR 1926.955 Overhead Lines
29 CFR 1926.956 Underground Lines
29 CFR 1926.957 Construction in Energized Substations
29 CFR 1926.96 Occupational Foot Protection
29 CFR 1928 Subpart C Roll-over Protective Structures
29 CFR 1928 Subpart D Safety for Agricultural Equipment
29 CFR 1960 Federal Employee Occupational Safety and Health Program
29 CFR 1990 Identification, Classification/Regulation of Potential
32 CFR 627.33 Methods of Decontamination
36 CFR 60, 61, 63, 65, 67, 68, 78, 79 National Park Service
36 CFR 800, 801, 805, 810, 811, 812 Advisory Council on Historic Pr
40 CFR 110 Discharge of Oil
40 CFR 112 Oil Pollution Prevention
40 CFR 112.7 Guidelines for Preparation and Implementation of SPCC P
40 CFR 116 Clean Water Act
40 CFR 117 Hazardous Materials Transportation Act
40 CFR 122 EPA Administered Permit Program, NPDES
40 CFR 123 State Program Requirements
40 CFR 136 Guidelines Establishing Test Procedures for Analysis of
40 CFR 141 National Primary Drinking Water Regulations
40 CFR 141-143 Safe Drinking Water Act
40 CFR 142 Implementation
40 CFR 144 Underground Injection Control Program
40 CFR 146 UIC Program: Criteria and Standards
40 CFR 147 Subpart NN Pennsylvania
40 CFR 147 Subpart XX West Virginia
40 CFR 1500-1508 CEQ Procedural Provisions
40 CFR 167 Registration of Pesticide and Active Ingredient Producin
40 CFR 171 Certification of Pesticide Applicators
40 CFR 243 Guidelines for Storage and Collection of Residential, Co
40 CFR 260-285 Resource Conservation and Recovery Act
40 CFR 262 Standards Applicable to Generators of Hazardous Waste
40 CFR 265 Subpart F
40 CFR 265.37 Arrangements with Local Authorities
40 CFR 268 Land Disposal Restrictions
40 CFR 280 Technical Standards and Corrective Action Requirements f
40 CFR 300 National Oil and Hazardous Substances Pollution Continge
40 CFR 302 Comprehensive Environmental Response, Compensation and L
40 CFR 302 Designation, Reportable Quantifics and Notification
40 CFR 311
40 CFR 355 Emergency Planning and Notification
40 CFR 370 Hazardous Chemical Reporting: Community Right to Know
40 CFR 372.10 Records
40 CFR 372.3 Emergency Planning and Community Right-to-Know Act
40 CFR 401 General Provisions for Effluent Guidelines and Standards
40 CFR 403 General Pretreatment Regulations for Existing and New Sources
40 CFR 50 National Primary and Secondary Ambient Air Quality Standa

40 CFR 52 Subpart NN - Pennsylvania
 40 CFR 52 Subpart XX - West Virginia
 40 CFR 60 Standards of Performance for New Stationary Sources
 40 CFR 61 National Emission Standards for Hazardous Air Pollutants
 40 CFR 61 Subpart M, National Emission Standard for Asbestos
 40 CFR 61.150 Resource Conservation and Recovery Act
 40 CFR 63 National Emission Standards for Hazardous Air Pollutants
 40 CFR 63.347 Clean Air Act
 40 CFR 68 Chemical Threshold Values
 40 CFR 70 State Operating Permit Programs
 40 CFR 724.277
 40 CFR 761 PCB Spill Cleanup
 40 CFR 761.125 Toxic Substances Control Act
 40 CFR 763 Asbestos-containing Materials in Schools
 40 CFR 763 EPA Worker Protection Rule
 40 CFR 798.4100 Dermal Sensitization
 40 CFR 82 Protection of Stratospheric Ozone
 40 CFR 88 Clean-Fuel Vehicles; Subpart C - Clean-Fuel Fleet Program
 40 CFR 89 Control of Emissions from New and In-Use Nonroad Engines
 40 CFR 90 Control of Emissions from Nonroad Spark Ignition Engines
 40 CFR 93 Determining Conformity of General Federal Actions to State
 42 CFR 72.3 Transportation of Materials Containing Certain Etiologi
 42 USC 300ee-2 Prevention of AIDS
 42 USC 4321-4370b National Environmental Policy Act
 42 USC 6901 CERCLA/SARA
 43 CFR 3, 7, 10 Office of Secretary of the Interior
 49 CFR 100-179 DOT Hazardous Materials Regulations
 49 CFR 100-199 Radioactive Materials
 49 CFR 171-179 Hazardous Materials
 49 CFR 171.15 Immediate Notice of Certain Hazardous Materials
 49 CFR 172 Hazardous Materials Table
 49 CFR 172.600 Emergency Response Information
 49 CFR 172.700 Emergency Response Information
 49 CFR 173 Shippers-General Requirements for Shipments and Packages
 49 CFR 177.834 Loading and Unloading
 49 CFR 178 Specifications for Packages
 49 CFR 178.500 Specifications for Packaging
 49 CFR 392.14 Hazardous Conditions Hazard Transport Emergency Respon
 49 CFR 395 Maximum Driving and On Duty Time
 50 CFR 17 Endangered and Threatened Wildlife and Plants
 7 CFR 355 Endangered Species Regulations Concerning Terrestrial Pla
 AASHTO GD-2-65
 ACGIH Threshold Limit Value for Chemical Substances and Physical Ag
 ACHD Article II Food Facility Lighting
 ACHD Article III Food Protection
 ACHD Article VII
 ACHD Article VIII (Manifesting)
 ACHD Article XV Plumbing
 ACHD Article XXI 2103.01 Operating Permits
 ACHD Article XXI 2104.01 Pollutant Emission Standards
 ACHD Article XXI 2105.01 Source Emission and Operating Standards
 ACHD Article XXI 2107.01 General Methods of Measurements
 ACHD Article XXI 2108.01 Reporting, Testing, and Monitoring
 ACHD Article XXI Section 2105.51 Abrasive Blasting
 ACHD Article XXI Section 2105.60 Asbestos Sources
 ACHD Article XXI Section 2105.62 Asbestos

ACHD Article XXI, Section 2108.01
AMA OUCH-213 - Medical
ANSI A10.14 Fall Protection - Safety Belts, Lifelines, and Harnesse
ANSI A117.1 Specification Facilities Accessible Handicapped People
ANSI A120.1 Safety Code for Powered Platforms for Exterior Building
ANSI A1264.1 Safety Requirements for Workplace Floor and Wall Openi
ANSI A14.1 Safety Code for Portable Wood Ladders
ANSI A14.2 Safety Code for Portable Metal Ladders
ANSI A14.3 Safety Code for Fixed Ladders
ANSI A58.1 Design Loads
ANSI A8.1 Design Loeads
ANSI A90.1 Safety Code for Manlifts
ANSI A92.9 Vehicle-Mounted Elevating and Rotating Platforms
ANSI B11.8 Drilling, Milling and Boring Machines
ANSI B30.10 Hooks
ANSI B30.20 Lifting Devices
ANSI B30.20-1009 Overhead and Gantry Cranes
ANSI B30.5 Mobile and Locomotive Cranes
ANSI B30.9 Slings
ANSI B56.1 Standard for Powered Industrial Trucks
ANSI C136 Roadway Lighting
ANSI C2 National Electrical Safety Code
ANSI C95.1-1974 Safety Level of Electromagnetic Radiation with Resp
ANSI D12.1 Roadway Lighting
ANSI D6.1 Manual on Uniform Traffic Control Devices for Streets and
ANSI N 13.5-1972 Direct Reading and Indirect Reading Pocket Dosimet
ANSI N 13.7-1972 Criteria for Film Badge Performance
ANSI N 323-1978 Radiation Proteciton Instrumentation Test and Calib
ANSI N 537-1976 Radiological Safety Standards for the Design of Rad
ANSI N 542-1977 Sealed Radioactive Sources
ANSI N 543-1974 Installations Using Non-medical X-ray and Sealed Ga
ANSI RP-7 Industrial Lighting
ANSI S12.19-1996 Measurement of Occupational Noise Exposure
ANSI S12.7-1986 Methods for Measurement of Impulse Noise
ANSI S3.44-1996 Determination of Occupational Noise Exposure and Es
ANSI Z117.1 Safety Requirements for Confined Spaces
ANSI Z136 Standard for Safe Use of Laser
ANSI Z358.1 Emergency Eyewash and Shower Equipment
ANSI Z359.1 Requirements for Personal Fall Arrest Systems, Subsystem
ANSI Z365 (draft)
ANSI Z41.1 Protective Footwear
ANSI Z43.1 Ventilation Control of Grinding, Polishing, and Buffing
ANSI Z49.1 Safety in Welding and Cutting
ANSI Z87.1 Occupational and Educational Eye and Face Protection
ANSI Z89.1 Protective Headwear for Industrial Workers
ANSI Z89.2 Safety Requirements for Industrial Head Protection
ANSI Z9.1 Safety Code for Ventilation and Operation of Open Surface
ANSI Z9.2 Design and Operation of Local Exhaust Systems
ANSI Z9.3 Safety Code for the Design, Construction and Ventilation
ANSI Z9.4 Ventilation and Safety Practicies of Abrasive Blasting Op
ANSI Z9.5 Laboratory Ventilation
ANSI/ASME A17.1 Safety Code for Elevators and Escalators
ANSI/ASME B30.9 Slings
ANSI/ASME B31.1-1992 Piping Code
ANSI/ASME B31.3-1996 Process Piping
ANSI/ASTM E1368-96A: Practice for Visual Inspection of Asbestos Ab

ANSI/IEEE C95.1-1991 Safety Levels With Respect to Human Exposure
 ANSI/ISA RP 12.13 Part II-1987 Installation/Operations/Maintenance
 ANSI/ISEA 102-1990 Gas Detector Tube Units
 ANSI/NFPA 110 Emergency and Standby Power Systems
 ANSI/NFPA 111 Stored Energy Emergency and Standby Power Systems
 ANSI/NFPA 37 Combustion Engines and Gas Turbines, Stationary
 ANSI/NFPA 55-1993 compressed and Liquified Gases in Portable Cylind
 ANSI/NFPA 58-1995 Storage and Handling of Liquified Petroleum Gases
 ANSI/SAE ARP 503E Emergency Evacuation Illumination
 API Std #620 Recommended Rules for the Design/Construction of Larg
 ASHRAE Handbook, Chapter 38 (Cryogenics)
 ASHRAE Standard 62a-1991, Veniltation for Accetable Inddor Air Qual
 ASME A17.1b Addenda for ANSI/ASME17.1
 ASME Boiler and Pressure Vessel Code
 BOCA Article 15, National Plumbing Code
 BOCA Chapter 20 Elevators
 BOCA Chapter 27, Electrical
 BOCA Chapters 13, 27, 32, 33
 BOCA Sections 307, 417, 418
 DOE CRD 420.1 Contractor Requirements Document
 DOE CRD 440.1 Contractor Requirements Document
 DOE CRD 460.2 Contractor Requirements Document
 DOE CRD 470.1 Contrator Requirements Document
 DOE DOE O 452.2 Safety of Nuclear Explosives Operations
 DOE G 151.1-1 V3-2 Offsite Response Interfaces
 DOE G 225.1-1 Guide for DOE order 225.1 Accident Investigations
 DOE G 340.1 Preventing Acts of Agressions, Threatening Behavior and
 DOE G 430.1-1 Chapter 3 Stages of Project Development
 DOE G 440.1-1 Worker Protection Management for DOE Federal Employee
 DOE G 440.1-5 Fire Safety
 DOE G 440.1-6 Implementation Guide for Use with Suspect/Counterfiet
 DOE G 450.4-1 Integrated Safety Management
 DOE G 452.2-1 Implementation Guide for DOE O 453.2
 DOE G 460.2-2 Materials and Transportation Guide
 DOE G 830.120 Implementation guide for 10 CFR 832.120
 DOE M 231.1-1 Environment, Safety and Health Reporting Manual
 DOE M 232.1 Occurrence Reporting and Processing of Information
 DOE M 251.1 Directives System Manual
 DOE M 420.1-1 Att. Packaging and Transportation Attachments
 DOE M 440.1-1 DOe Explosives Safety Manual
 DOE N 3790.1-4 WorkPlace Violence
 DOE O 1324.2A Records Disposition
 DOE O 141.1
 DOE O 151.1 Comprehensive Emergency Management
 DOE O 225.1 Accident Investigation
 DOE O 231.1 Environment, Safety and Health Reporting
 DOE O 232.1 Occurrence Reporting and Processing System
 DOE O 350.1 Contractor Human Resource Management Programs
 DOE O 3791.2A Federal Employee Motor Vehicle Safety Program
 DOE O 420.1 Facility Safety
 DOE O 4330.4B Guidelines for Conduct of Maintenance
 DOE O 440.1 Worker Protection Management for DOE Federal Employees
 DOE O 450.2 Identification, Implementation, and Compliance with Env
 DOE O 450.4 Safety Management System Policy
 DOE O 451.1 National Environmental Policy Act
 DOE O 452.1 Nuclear Explosive and Weapons Surety Program

DOE O 460.1 Departmental Materials Transportation and Packaging
 DOE O 470.1 Safeguards and Security Program
 DOE O 5400.1 General Environmental Protection
 DOE O 5400.5 Derived Concentration Guide Table and Dose Limits to t
 DOE O 5480.1
 DOE O 5480.10
 DOE O 5480.10 Contractor Industrial Hygiene Program
 DOE O 5480.11 Radiation Protection for Occupational Workers
 DOE O 5480.14 CERCLA Program
 DOE O 5480.15 Accreditation Program for Personnel Dosimetry
 DOE O 5480.19 Conduct of Operations
 DOE O 5480.3 Packaging and Transportation of Hazardous Materials, H
 DOE O 5480.4 Environmental Protection, Safety and Health Protection
 DOE O 5480.8 Contractor Occupational Medical Program
 DOE O 5820.2A
 DOE O 6430.1A General Design Criteria
 DOE P 340.1 Preventing Acts of Aggressions, Threatening Behavior and
 DOE P 450.1 Safety Management System Policy
 DOE PMR Subpart 109-83 Motor Equipment Management
 DOE Radio Services Procedural Guide
 DOE-HDBK-1090-95 Hoisting and Rigging Manual
 DOE-STD-1030 Guide to Good Practices for Lockouts/Tagouts
 DOE/EH-0353P 66. Power Industrial Trucks
 DOE/EH-0353P Personal Protective Equipment
 DOE/EH-0353P, CSE-1 Confined Space Entry
 EO 11514 National Environmental Policy Act
 EO 11593 Protection and Enhancement of Cultural Environment
 EO 11988 Floodplain Management
 EO 11990 Protection of Wetlands
 EO 12088 Compliance with Pollution Control Standards
 EO 12114 Environmental Effects Abroad of Major Federal Actions
 EO 12196 Occupational Safety and Health Programs for Federal Employ
 EO 12843
 EO 12844 Federal Use of Alternatively Fueled Vehicles
 EO 12845 Requiring Agencies to Purchase Energy Efficient Computer E
 EO 12856 Federal Compliance with Right-to-Know Laws and Pollution P
 EO 12873 Federal Acquisition, Recycling and Waste
 EO 12899 Environmental Justice
 EO 12902 Energy Efficiency and Water Conservation
 EO 13006 Locating Federal Facilities on Historic Properties in Our
 EO 13007 Accommodation of Sacred Sites
 EO Smoking in Federal Buildings
 EPA Primary/Secondary National Drinking Water Standards
 Federal Insecticide, Fungicide, Rodenticide Act
 FR 59:47570-47571, OSHA Proposed Indoor Air Quality Standard
 GDHS-84
 GU-2-73
 HB-13
 Indoor Radon Abatement Act Section 309
 Local Standard Needed
 Manual of Regulations and Procedures for Federal Radio Frequency Ma
 MIL-HDBK-1037/2 Child Development Centers
 Morgantown City Ordinance 527 Noise Control
 NFPA 1 Fire Prevention
 NFPA 101 Code for Safety to Life from Fire in Buildings and Structu
 NFPA 110 Emergency and Standby Power Systems

WV 47 CSR 12 Groundwater Protection Standard
WV 47 CSR 26 Water Pollution Control Permit Fee Schedule
WV 47 CSR 35 Hazardous Waste Management Rule
WV 47 CSR 36-1 UST Requirements
WV 47 CSR 38-1 Solid Waste Management
WV 47 CSR 38B-2 Proof of Proper Solid Waste Disposal
WV 47 CSR 38F Lead Acid Batteries
WV 47 CSR 55 Groundwater Protection Act Fee Schedule
WV 47 CSR 58 Groundwater Protection Regulations
WV 47 CSR 59 Monitoring Well Regulations
WV 47 CSR 60 Monitoring Well Design Standards
WV 48 CSR 4 Groundwater Protection Practices for Industrial Establi
WV 60 CSR Series 3 Paragraph 9.5 Ecological
WV 61 CSR 12A, Cert. Pest Applicator Rules
WV 61 CSR 12C, Wood Destroying Inset Treatment
WV 61 CSR 12G, General Groundwater Protection Rules for Pesticides
WV 61 CSR 12I, Non-Bulk Pesticide Rules for Permanenet Operational
WV 61 CSR 12J Integrate Pest Management Programs in Schools/Day Car
WV 61 CSR 14, West Virginia Plan Pest Act Rule
WV 61 CSR 22, Generic State Management Plan for Pesticides/Fertiliz
WV 64 CSR 21 Child Care Centers
WV 64 CSR 56 Infectious Medical Waste
WV 64 CSR 63 Asbestos Licensing, State of WV
WV Chapter 1 Article 3 Food Service Sanitatin Regulation
WV Code Chapter 16-4c-14 Emergency Medical Technicians
WV State Board of Health Food Service Sanitation Regulation
WV Vehicle Code