

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING	PAGE 1 OF 289 PAGES
2. CONTRACT (Proc. Inst. Ident.) NO. DE-AMC26-99FT40464		3. EFFECTIVE DATE JUNE 1, 1999	4. REQUISITION/PURCHASE REQUEST PROJECT NO. 26-98FT40464.000	
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)		

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State, and ZIP Code) EG&G Services 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
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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
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15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
1.	Site Operations and Program Support Services (SOPSS) 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	See Part I, Section B	See Part I, Section E	See Part I, Section F
2.	Reports, as prescribed in accordance with the Reporting Requirements Checklist.				

15G. TOTAL AMOUNT OF CONTRACT \$ 54,066,744

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	26-91
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	92-289
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	13-25			

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 DE-AC26-98FT40464, 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.
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19A. NAME AND TITLE OF SIGNER (Type or print) Randall A. Wotring, General Manager	20A. NAME OF CONTRACTING OFFICER Debra E. Ball
19B. NAME OF CONTRACTOR By: <i>Randall A. Wotring</i> (Signature of person authorized to sign)	19C. DATE SIGNED 6/1/99
20B. UNITED STATES OF AMERICA By: <i>Debra E. Ball</i> (Signature of Contracting Officer)	20C. DATE SIGNED 5/28/99

TABLE OF CONTENTS

DE-AM26-99FT40464

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 (JUL 1991)	8
E.2 ACCEPTANCE (NOV 1997)	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 WAGE RATE DETERMINATION	14
H.5 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR	14
H.6 PREFERENCE IN HIRING	14
H.7 AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE) LEASING	14

H.8	ORDERING PROCEDURE	15
H.9	TECHNICAL DIRECTION	15
H.10	MODIFICATION AUTHORITY	16
H.11	GOVERNMENT PROPERTY AND DATA	16
H.12	SUBCONTRACTS	17
H.13	SERVICES OF CONSULTANTS	18
H.14	POSITION QUALIFICATIONS	18
H.15	FUNDING	18
H.16	PAYMENTS UNDER FIXED RATE TASK ORDERS	19
H.17	PAYMENTS UNDER FIRM FIXED PRICE TASK ORDERS	22
H.18	DAVIS-BACON AND OTHER LABOR PROVISIONS FOR CONSTRUCTION SUBCONTRACTS	22
H.19	CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES	22
H.20	ENVIRONMENT, SAFETY, AND HEALTH – ON-SITE SERVICE CONTRACTS	22
H.21	INDEMNITY – ENVIRONMENTAL, HEALTH AND SAFETY VIOLATIONS	24
H.22	52.216-18 ORDERING	24
H.23	YEAR 2000 COMPLIANCE	24
H.24	LOBBYING RESTRICTION (DEPT. OF INTERIOR AND RELATED AGENCIES, 1998)	24
H.25	LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1998)	24
H.26	INSURANCE REQUIREMENTS	24
H.27	COMMUNITY COMMITMENT	25

SECTION I - CONTRACT CLAUSES

I.1	52.202-1 DEFINITIONS. (OCT 1995)	26
I.2	52.203-3 GRATUITIES. (APR 1984)	27
I.3	52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)	27
I.4	52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (JUL 1995)	27
I.5	52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)	28
I.6	52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)	28
I.7	52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)	29
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) 33	
I.11	52.215-2 AUDIT AND RECORDS - NEGOTIATION. (AUG 1996)	33
I.12	52.215-8 ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT. (OCT 1997)	34
I.13	52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA. (OCT 1997) ..	34
I.14	52.215-12 SUBCONTRACTOR COST OR PRICING DATA. (OCT 1997)	35
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)	36
I.17	52.216-221 INDEFINITE QUANTITY (OCT 1995)	36
I.18	52.217-8 OPTIONS TO EXTEND SERVICES (AUG 1989)	36

I.19	52.219-8 UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS. (JUN 1997)	36
I.20	52.219-9 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN. (AUG 1998) – ALTERNATE II (MAR 1996)	37
I.21	52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN. (AUG 1998)	40
I.22	52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)	40
I.23	52.222-3 CONVICT LABOR. (AUG 1996)	40
I.24	52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION. (JUL 1995)	41
I.25	52.222-26 EQUAL OPPORTUNITY. (APR 1984)	41
I.26	52.222-28 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS. (APR 1984)	42
I.27	52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (APR 1998)	42
I.28	52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS. (JUN 1998)	44
I.29	52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (APR 1998)	45
I.30	52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED. (MAY 1989)	45
I.31	52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES. (MAY 1989)	49
I.32	52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS). (MAY 1989)	49
I.33	52.222-47 SCA MINIMUM WAGES AND FRINGE BENEFITS APPLICABLE TO SUCCESSOR CONTRACT PURSUANT TO PREDECESSOR CONTRACTOR COLLECTIVE BARGAINING AGREEMENTS (CBA). (MAY 1989)	50
I.34	52.223-2 CLEAN AIR AND WATER. (APR 1984)	50
I.35	52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. (JAN 1997)	51
I.36	52.223-6 DRUG-FREE WORKPLACE. (JAN 1997)	52
I.37	52.223-10 WASTE REDUCTION PROGRAM. (OCT 1997)	53
I.38	52.223-14 TOXIC CHEMICAL RELEASE REPORTING. (OCT 1996)	53
I.39	52.224-1 PRIVACY ACT NOTIFICATION. (APR 1984)	54
I.40	52.224-2 PRIVACY ACT. (APR 1984)	54
I.41	52.225-3 BUY AMERICAN ACT - SUPPLIES. (JAN 1994)	54
I.42	52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (AUG 1998)	55
I.43	52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES. (SEP 1996)	55
I.44	52.227-1 AUTHORIZATION AND CONSENT. (JUL 1995)	56
I.45	52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (AUG 996)	56
I.46	52.227-3 PATENT INDEMNITY. (APR 1984)	56
I.47	52.227-6 ROYALTY INFORMATION. (APR 1984)	57
I.48	952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT. (SEP 1997) (DEVIATION)	57
I.49	52.227-17 RIGHTS IN DATA - SPECIAL WORKS. (JUN 1987)	63
I.50	52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION. (JAN 1997)	64
I.51	52.229-3 FEDERAL, STATE, AND LOCAL TAXES. (JAN 1991)	64
I.52	52.230-2 COST ACCOUNTING STANDARDS. (APR 1998)	65
I.53	52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES. (APR 1998)	66
I.54	52.230-4 CONSISTENCY IN COST ACCOUNTING PRACTICES. (AUG 1992)	66

I.55	52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS. (APR 1996)	66
I.56	52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (MAY 1997)	68
I.57	52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS. (APR 1984)	68
I.58	52.232-17 INTEREST. (JUN 1996)	68
I.59	52.232-18 AVAILABILITY OF FUNDS. (APR 1984)	69
I.60	52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986)	69
I.61	52.232-25 PROMPT PAYMENT. (JUN 1997)	69
I.62	52.233-1 DISPUTES. (OCT 1995)	72
I.63	52.233-3 PROTEST AFTER AWARD. (AUG 1996)	73
I.64	52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION. (APR 1984)	74
I.65	52.237-3 CONTINUITY OF SERVICES. (JAN 1991)	74
I.66	52.237-7 INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE. (JAN 1997)	74
I.67	52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME. (OCT 1997)	75
I.68	52.242-1 NOTICE OF INTENT TO DISALLOW COSTS. (APR 1984)	75
I.69	52.242-13 BANKRUPTCY. (JUL 1995)	76
I.70	52.243-1 CHANGES - FIXED-PRICE. (AUG 1987) – ALTERNATE I (APR 1984)	76
I.71	52.243-3 CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS. (AUG 1987)	76
I.72	52.244-2 SUBCONTRACTS. (AUG 1998)	77
I.73	52.244-5 COMPETITION IN SUBCONTRACTING. (DEC 1996)	78
I.74	52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS. (APR 1998)	78
I.75	52.245-1 PROPERTY RECORDS. (APR 1984)	79
I.76	52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS). (DEC 1989)	79
I.77	52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS). (JAN 1986)	81
I.78	52.246-25 LIMITATION OF LIABILITY—SERVICES. (FEB 1997)	84
I.79	52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS. (JAN 1997)	84
I.80	52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS. (JUN 1997)	85
I.81	52.249-6 TERMINATION (COST-REIMBURSEMENT). (SEP 1996) – ALTERNATE V (SEP 1996)	86
I.82	52.249-14 EXCUSABLE DELAYS. (APR 1984)	88
I.83	52.251-1 GOVERNMENT SUPPLY SOURCES. (APR 1984)	88
I.84	52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES. (JAN 1991)	88
I.85	52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998)	88
I.86	52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)	89
I.87	952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST. (JUN 1997)	89
I.88	952.247-70 FOREIGN TRAVEL. (FEB 1997)	90
I.89	952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS. (JUN 1995)	90
I.90	970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (JAN 1993)	91
I.91	52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)	91
	SECTION J - LIST OF ATTACHMENTS	92
	J.1 SECTION J – LIST OF ATTACHMENTS	92

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 - Site Operations and Program Support Services for the Federal Energy Technology Center in accordance with the 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 "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 C1, 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 C1 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).....	\$50,061,801*
First Option Year.....	\$17,605,064*
Second Option year.....	\$18,103,504*

* = Total Estimated Labor Cost + Travel + ODCs

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

Base Period (3 years).....	
First Option Year.....	
Second Option Year.....	

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 categories in Section J, Attachment C2. If on the average the contractor pays less than the amount specified in Section J, Attachment C2 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 C1, 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 \$1,000,000 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 Available 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 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 6 % of the total cost planned on fixed rate tasks during that evaluation period. Costs planned means the Contracting Officer's negotiated approved cost projections for a given task order.

*equals the MAXIMUM AVAILABLE AWARD FEE divided by the TOTAL ESTIMATED COSTS

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 (JUL 1991)

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 (NOV 1997)

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 principal place of performance under this contract shall be at the Department of Energy (DOE) Federal Energy Technology Center (FETC) facilities located at 3610 Collins Ferry Road, Morgantown, West Virginia, and at 626 Cochrans Mill Road, Pittsburgh (i.e., Bruceton, South Park Township), Pennsylvania.

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-AM26-99FT40464, 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 provide, as a minimum, a breakout by line item, 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

(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>
-------------	-----------------

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 WAGE RATE DETERMINATION

Service Contract Act wage rate determinations applicable to this contract are:

<u>Wage Rate Determination</u>	<u>Revision</u>	<u>Date</u>
94-0732	2	10/29/1998
96-0253	9	06/16/1997
94-2452	5	07/01/1997
94-2574	9	10/28/1998

Copies of the above determinations are included as Section J, Attachment G.

H.5 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.6 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.7 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.

2 of 2
3/10/08
Brentnaugh
copy of Task Prop.
up over ydax, see, and
summary pg to me from E6
then - OK/TH
made as confirmation
then - task is initiated
Initiated by [unclear] SP.

H.8 ORDERING PROCEDURE

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

The Contracting Officer will issue a Task Proposal Request to the contractor 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
- (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.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, Attachment I, shall be furnished.
- (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 Business Concerns and Small Disadvantaged Business Concerns" and "Small Business and Small Disadvantaged 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 POSITION QUALIFICATIONS

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 the "Position Qualifications" attachment to this contract, except as the Contracting Officer may authorize. (See Part III, Section J for identification of the "Position Qualifications").

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 contractors 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 DAVIS-BACON AND OTHER LABOR PROVISIONS FOR CONSTRUCTION SUBCONTRACTS

When it is determined by the Contracting Officer that the work to be performed under this contract is subject to the Davis-Bacon Act, the contractor and its subcontractors shall abide by the provisions of the Davis-Bacon Act.

H.19 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.20 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.21 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.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 performance period specified 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 and FAR 52.237-7 (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

D. Medical Professional Liability

Per Occurrence	\$ 750,000
Aggregate	\$2,000,000

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

I.1 52.202-1 DEFINITIONS. (OCT 1996)

(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.

1.2 52.203-3 GRATUITIES. (APR 1984)

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

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

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

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

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

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

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

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

1.3 52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)

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

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

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

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

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

1.4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (JUL 1985)

(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.

1.5 52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1986)

(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.

1.6 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may -

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which -

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either -

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

I.7

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

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be -

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts -

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may -

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

1.8 62.203-12 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.

I.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.

I.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.

I.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.

L.12 52.215-8 ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT. (OCT 1997)

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

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

L.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.

L.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 52.217-8 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.19 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.

L20

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.

L21 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.

L22 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.

L23 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.

1.24 §2.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION. (JUL 1995)

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records.

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

1.25 §2.222-26 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 advertisement 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.

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.

I.29 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (APR 1988)

(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.

I.30 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED. (MAY 1989)

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

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

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

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

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

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

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

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

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

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

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

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

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

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

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

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

of a higher wage to any employee.

(f) Successor contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

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

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

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

(i) For each employee subject to the Act -

(A) Name and address and social security number;

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

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

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

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

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

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

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

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

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

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

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

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

(n) Seniority list. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

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

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

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

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

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

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

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

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

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

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

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

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

L31 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES. (MAY 1989)

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

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

Employee Class	Monetary Wage - Fringe Benefits
[]	[]
[]	[]
[]	[]
[]	[]

L32 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS). (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in

applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

- (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
- (2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or
- (3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

I.33 52.222-47 SCA MINIMUM WAGES AND FRINGE BENEFITS APPLICABLE TO SUCCESSOR CONTRACT PURSUANT TO PREDECESSOR CONTRACTOR COLLECTIVE BARGAINING AGREEMENTS (CBA). (MAY 1989)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offers shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor [] and the [] (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

I.34 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).

135

62.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. (JAN 1997)

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

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

MATERIAL

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

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

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

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

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

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

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

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

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

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

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

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

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

I.36 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.

L37 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.

L38 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).

L39 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.

L40 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.

L41 52.225-3 BUY AMERICAN ACT - SUPPLIES. (JAN 1984)

(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).

1.42 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.

1.43 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES. AS PRESCRIBED IN 26.104, INSERT THE FOLLOWING CLAUSE: (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-SIB
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.

1.44 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.

1.45 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.

1.46 52.227-3 PATENT INDEMNITY. (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to -

- (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

I.47 52.227-6 ROYALTY INFORMATION. (APR 1984)

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

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit.

(6) Unit price of contract item.

(7) Number of units.

(8) Total dollar amount of royalties.

(b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

I.48 952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT. (SEP 1997) (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 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 or 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.

1.49 52.227-17 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.

1.50 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.

1.51 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.

1.52

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-

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L53 52.230-3 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.

L54 52.230-4 CONSISTENCY IN COST ACCOUNTING PRACTICES. (AUG 1982)

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.

L55 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.

L56 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.

L57 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.

L58 52.232-17 INTEREST. (JUN 1996)

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

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

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

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

I.59 52.232-18 AVAILABILITY OF FUNDS. (APR 1984)

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

I.60 52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

I.61 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).

(ix) 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.

1.62 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.

L63

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.

1.64 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.

1.65 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.

1.66 52.237-7 INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE. (JAN 1997)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: [*].

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If, during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

L.67 62.237-10 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.

L.68 62.242-1 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.

1.69 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.

1.70 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.

(End of clause)

1.71 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.

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: Baker and Associates; Chester Engineers; D.N. American, Inc.; Pace Tec; Science Applications International Corporation; TriLogic Corporation; Roy F. Weston, Inc.

I.73 52.244-5 COMPETITION IN SUBCONTRACTING. (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

I.74 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.

L76 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.

L76 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 properly 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.

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.

(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 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.

L78 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.

L79 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.

L80

52.247-64 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.

1.81 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.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (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.

L82 52.249-14 EXCUSABLE DELAYS. (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

L83 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.

L84 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.

L85 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]

L86 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.

L87 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 (Contracting Officer see DEAR 909.507-2 and enter specific term) 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.

L88 952.247-70 FOREIGN TRAVEL. (FEB 1997)

(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 970.5204-69 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 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1994)

(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
B	Reporting Requirements Checklist
C1	Schedule of Fully Burdened Labor Rates
C2	Schedule of Hourly Wages and Fringe Benefits
D	Small Business, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan
E	Position Qualifications
F	Performance Evaluation Plan
G	Wage Rate Determinations
H	Organizational Conflicts of Interest
I	Property
J	List of Environmental, Safety, and Health and Related Standards

STATEMENT OF WORK

**SITE OPERATIONS AND PROGRAM SUPPORT SERVICES (SOPSS)
FOR THE FEDERAL ENERGY TECHNOLOGY CENTER (FETC)**

OBJECTIVE

The overall objective for the Site Operations and Program Support Services (SOPSS) Contract for the Federal Energy Technology Center (FETC) is to provide site management support services, risk management support services, and crosscutting support services at Department of Energy facilities located in Morgantown, West Virginia, and Pittsburgh, Pennsylvania. These services are primarily in support of on-site activities that are divided into core work and variable work.

It is the contractor's responsibility to develop and implement innovative approaches and adopt practices that foster continuous improvement in accomplishing the mission of FETC and moving into the 21st century. FETC expects the contractor to produce effective and efficient management structures, systems, and operations that challenge the status quo while maintaining high levels of quality and safety in accomplishing FETC's mission. The contractor shall conduct all work in a manner that continually improves productivity, minimizes waste, and fully complies with all applicable laws, regulations, and terms and conditions of the contract.

BACKGROUND

FETC is a government-owned and government-operated facility. 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. At each site, there are research, development, and demonstration (RD&D) activities being performed.

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 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.

SCOPE

The activities in this Statement of Work are mainly in support of on-site operations at FETC and are significantly aligned with the current functions of FETC's Office of Program Support and Site Operations (e.g., Environmental, Safety, and Health Division, Site Operations Division, Budget and Financial Management Division, Acquisition and Assistance Division, Human Resources Division, and, to a lesser extent, the Information Resources Management Division) and, to a limited degree, FETC's Office of Systems and Environmental Analysis' Management and Communications Division. "On-site" is defined as the contractor residing and providing the specified service or work at FETC's Morgantown, West Virginia, and Bruceton, South Park Township, Pennsylvania sites.

In this Statement of Work, "core work" is defined as predictable, schedulable, and recurring work (i.e., primarily on-site FETC work utilizing on-site contractor resources) to be performed under the course of this contract. The work outlined in this Statement of Work is core work, unless otherwise noted as being variable work. "Variable work" is defined as work that can be anticipated under the course of this contract; however, it will be variable in nature with respect to the amount of work, the timing of work, the duration of work, and the scope of work. Variable work may be on-site or off-site, using either on-site or off-site contractor resources.

This Statement of Work is organized according to a work breakdown structure. The highest tier is defined at the task level (1.0 - Risk Management Support; 2.0 - Site Management Support; 3.0 - Program Management Support). The next tier (denoted also by a two-digit classification) is the major sub-structure under these tasks.

WORK TO BE PERFORMED

1.0 RISK MANAGEMENT SUPPORT

The purpose of this task is to administer and continuously improve cross-cutting risk management (i.e., risk assessment, risk reduction, and risk maintenance) support services for FETC. The support shall span both the Morgantown (MGN) and Pittsburgh (PGH) facilities, except where noted. Much of the work outlined is geared toward providing consultation services and implementing requirements within existing DOE-managed programs and processes necessary for regulatory and consensus standard compliance, as documented in FETC's draft standards list and its regulatory compliance plan. The major task deliverables are reports, plans, and assessments. The work in this task includes, but is not limited to, the following support services:

1.1 Environmental Compliance and Consultation Services

The contractor shall assist in the implementation and maintenance of programs that support FETC's environmental compliance, monitoring, and surveillance requirements. These programs include: Air Quality Program, Water Quality Program, Soil and Radiological Surveillance Program, and Waste Minimization Program. Many of these programs' requirements are outlined in existing DOE plans, which require annual updating by the contractor. The contractor shall provide recurring environmental consulting services to FETC personnel.

1.1.1 Air Quality Program Support. The contractor shall support the implementation and maintenance of an Air Quality Program which is compliant with DOE, Federal, State, and local requirements. The term air is defined as: ambient air, indoor air, and source emissions. Services shall include compliance provisions for the Clean Air Act and the following:

- a. obtaining and maintaining necessary permits. The contractor shall support DOE efforts to obtain and maintain necessary air emissions permits from the States of Pennsylvania and West Virginia for the facilities as a whole or for individual on-site projects, as required by law or deemed appropriate by DOE. The contractor shall be required to collate and analyze information, fill out forms, and provide technical expertise for plume modeling to support permit requirements. The contractor shall provide administrative support and technical expertise to conduct public meetings associated with permit issuance;
- b. operating, maintaining, and calibrating the meteorological towers. The contractor shall operate, maintain, and calibrate meteorological towers so that the individual components are functional and accurate. The contractor shall be responsible for integrating the raw data readout to the computer system so that the data are available remotely for emergency operations use. The contractor shall be responsible for archiving the data according to DOE records management schedules;
- c. performing air monitoring. The contractor shall perform point source emissions monitoring, ambient air monitoring, and fugitive emissions monitoring. The contractor shall collect, collate, and interpret the data on a schedule as required by the applicable regulatory agencies in West Virginia (State Department of Environmental Protection) and Pennsylvania (Allegheny County Health Department and State Department of Environmental Protection);
- d. documenting air surveillance and air emissions inventory. The contractor shall collect, collate, and document air monitoring results (where available) and air emission projections or calculations for inclusion in FETC's air emission inventory;
- e. conducting plume modeling for permitting and emergency response planning activities. The contractor shall provide technical expertise to operate both ARCHIE and CAMEO air modeling programs, and

provide plume modeling expertise to support emergency response operations;

- f. providing indoor air quality monitoring and consulting services. The contractor shall monitor indoor air quality and interpret results in response to complaints or concerns and provide recommendations for corrective actions; and
- g. tracking and maintaining inventories of ozone-depleting substances at FETC. The contractor shall maintain inventories and track the location and ultimate disposition of ozone-depleting substances at the FETC facilities.

1.1.2 Water Quality Program Support. The contractor shall support the implementation and maintenance of a Water Quality Program that is compliant with DOE, Federal, State, and local requirements. The term water includes: drinking water, groundwater, surface water, storm water, and industrial and municipal waste-water. Services shall include compliance provisions for the Clean Water Act, Safe Drinking Water Act, and the following:

- a. obtaining and maintaining permits. The contractor shall support the facilities' permitting processes, including those required by the West Virginia and Pennsylvania Departments of Environmental Protection, and Morgantown, West Virginia's Industrial Waste Ordinance as administered by the Morgantown Utility Board;
- b. updating Spill Preventive Control and Countermeasure (SPCC) Plans and Preparedness, Prevention and Contingency (PPC) Plans. The contractor shall collect and collate information for the SPCC Plan (PGH and MGN) and the PPC Plan (PGH), and prepare updated reports;
- c. performing surface water management activities. The contractor shall perform surface water and sediment monitoring, and institute management practices eliminating or minimizing surface water and sediment quality impacts. The contractor shall collect, analyze, and interpret data. The contractor shall maintain and calibrate remote monitoring systems as needed;
- d. performing groundwater monitoring and well maintenance. The contractor shall perform groundwater monitoring and well maintenance according to an annual plan. The contractor shall annually update this monitoring and maintenance plan which includes a schedule and method for sampling and analyzing groundwater for approximately 25 wells at each of the two facilities. Updated information on aquifers and site geology for application to the monitoring program shall also be included. The contractor shall download data into a Geographical Information System (GIS) to represent the sites' geology and groundwater quality variations. The contractor shall provide statistical analysis of the groundwater quality trends as part of the annual updated groundwater report;
- e. performing storm water monitoring. The contractor shall perform storm water monitoring and analysis as required by the National Pollutant Discharge Elimination System (NPDES) storm water monitoring requirements, permits, and associated QA/QC. The contractor shall update DOE's storm water monitoring plan as required;
- f. performing industrial wastewater monitoring. The contractor shall sample and analyze industrial wastewater as required by the NPDES pretreatment regulations, the Morgantown Industrial Waste Ordinance, and the Pleasant Hills, Pennsylvania Authority;
- g. performing drinking water monitoring. The contractor shall implement a drinking water monitoring plan and institute a sampling schedule in accordance with the plan. The contractor shall post the monitoring results at the locations where the samples were taken;
- h. managing storage tanks. The contractor shall implement a storage tank management plan, that shall contain, but is not limited to, the following elements: storage tank inventory, regulatory compliance, periodic tightness testing, and coordinating fuel deliveries to the facilities; and
- i. performing *Legionella* monitoring. The contractor shall implement a *Legionella* monitoring plan

through a sampling schedule in accordance with the plan.

1.1.3 Soil Quality Program Support. The contractor shall assist in the implementation and maintenance of a Soil Surveillance and Monitoring Program that is compliant with DOE, Federal, State, and local requirements. Services shall include conducting soil quality surveys. The contractor shall implement a soil quality management plan and institute a sampling schedule in accordance with the plan. The contractor shall include general soil quality surveillance and sampling in contaminated and potentially contaminated areas as required. The results of the survey shall be compiled and entered into the GIS.

1.1.4 Waste Minimization and Pollution Prevention Program Support. The contractor shall assist in the implementation of FETC's Waste Minimization and Pollution Prevention Program in accordance with DOE requirements by:

- a. compiling data to support FETC's waste minimization report. The contractor shall collect and compile information for FETC's waste minimization report in a format specified by DOE;
- b. implementing waste minimization and pollution prevention initiatives; and
- c. conducting pollution prevention opportunity assessments. The contractor shall review the waste streams for FETC on-site projects for chemical use and advise project leaders if there is a less hazardous substitute or minimization opportunity.

1.1.5 Annual Site Environmental Report Support. The contractor shall assist FETC in updating its annual site environmental report by providing and analyzing environmental monitoring and surveillance information and data obtained through the above environmental support programs.

1.2 Chemical Hygiene and Hazardous Waste Compliance and Consultation Services

The contractor shall assist in the implementation and maintenance of programs that support the sites' chemical hygiene, hazards communication, and hazardous waste management programs. Many of these programs' requirements are contained in existing plans, which require annual updating by the contractor.

1.2.1 Chemical Hygiene Program Support. The contractor shall assist in the implementation and maintenance of programs that support the sites' chemical hygiene program. Support of this program shall include, but is not limited to, the following:

- a. collecting and maintaining Material Safety Data Sheets (MSDS) for on-site chemicals. The contractor shall collect MSDS's for all new chemicals. The contractor shall maintain a database of MSDS's and have them available upon request to all employees and FETC's Emergency Response Organization;
- b. maintaining the sites' chemical inventory. The contractor shall maintain the sites' chemical inventory using a database of chemical locations and quantities. The contractor shall list and track the reproductive hazards on the site;
- c. inspecting FETC's gas cylinder storage facilities. The contractor shall inspect the gas cylinders for signage, leaks, and damage on a schedule determined by DOE;
- d. compiling a list of regulated chemicals for Emergency Planning Community Response Act (EPCRA) reporting. The contractor shall complete the forms and documentation necessary for compliance with EPCRA by completing the Superfund Amendments and Reauthorization Act (SARA) Tier II forms;
- e. providing expert consultation for materials covered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and collecting MSDS's for all materials to be used;
- f. providing expertise and consultation services, especially to on-site researchers. The contractor shall provide expertise and consultation services related to the use of personal protective equipment and provide environment, safety, and health (ES&H) training for FETC employees before they start new

assignments with new potential risks, new employees when they begin work at FETC, and temporary contractors before they begin work; and

- g. providing chemical vulnerability analysis. The contractor shall prepare chemical vulnerability analysis in accordance with DOE requirements.

1.2.2 Hazards Communication (HAZCOM) Program Support. The contractor shall provide support to FETC's chemical hygiene officers and chemical hygiene inspectors to maintain compliance with HAZCOM requirements by:

- a. providing consultation and assessment services for safe chemical use, handling, and storage;
- b. estimating exposure risk; and
- c. providing site-wide HAZCOM training.

1.2.3 Hazardous Waste Management Program Support. The contractor shall assist in the implementation and maintenance of the FETC hazardous waste management program in accordance with Federal, State, and local requirements by:

- a. operating and maintaining FETC's Chemical and Waste Handling Facilities (Chemical Handling Facility [PGH] and Buildings 16 and 33 [MGN]). The contractor shall maintain a safe working environment in these facilities. The contractor shall maintain a waste materials inventory, including accumulation date and material characterization and identification information, perform inspections of materials received, and ensure that employees and subcontractors have received the necessary training to work safely in these facilities. The contractor shall prepare the hazardous waste manifests and land disposal restriction documents, and archive the documentation according to DOE record management schedules. The contractor shall obtain chemical analyses where needed or requested to determine chemical identity for classification as a hazardous or regulated substance. The contractor shall ensure that all hazardous wastes are properly packaged and labeled prior to shipping for disposal. The contractor shall arrange for the shipment of hazardous and regulated substances to Resource Conservation and Recovery Act (RCRA)-permitted treatment, storage, and disposal facilities;
- b. collecting wastes from laboratory and process areas on a regular schedule and as requested by DOE. The contractor shall collect laboratory and process wastes from satellite accumulation areas. The contractor shall ensure wastes are properly labeled, stored and packaged. The contractor shall ensure the safe transport of the wastes around the site;
- c. providing information and completing forms required for reporting to regulatory agencies;
- d. developing and generating required regulatory hazardous waste/materials reports in compliance with Federal, State, and local regulations;
- e. providing reviews of FETC's waste streams to ensure that the FETC remains compliant with Federal, State and local hazardous waste regulations and retains the ability to safely handle and accumulate the wastes created on the site;
- f. receiving, shipping, and dispensing chemicals and samples. The contractor shall provide for chemical receiving, shipping, and dispensing services for FETC's chemical users; and
- g. providing consultation support for audits and inspections.

1.3 Safety Compliance and Consultation Services

The contractor shall assist in the implementation and maintenance of FETC programs under the broad category of safety support and services, including expertise in safety evaluations.

1.3.1 Emergency Preparedness and Response Program Support. The contractor shall assist in the implementation and maintenance of FETC's emergency preparedness and response program according to 29 CFR 1910.120, other related CFR's referenced in FETC's draft standards database, the DOE Order 151.1 Emergency Management System, and applicable portions of the implementation guide. Elements of the program shall include, but are not limited to, the following:

- a. conducting drills and exercises. The contractor shall develop and execute two emergency response training drills per year per facility to provide training and practice for the scene emergency response team and management emergency response, and develop and execute one annual independently evaluated integrated exercise per facility, designed to encompass all sectors of the emergency response organization (ERO) and off-site response organizations. The contractor shall conduct (at a minimum) quarterly communications drills of emergency response communications equipment;
- b. providing emergency response training. The contractor shall conduct annual general training for employees (non-ERO) through computer-based training, position-specific training as new personnel accept ERO positions, and refresher training annually for members of the ERO. The contractor shall provide hazardous waste operations (HAZWOPER) training for new hazardous materials (HAZMAT) team members and other site employees as required by their job functions (e.g., hazardous waste management personnel) and shall provide HAZWOPER refresher training as required for ERO personnel and other site employees as required by their jobs functions. The contractor shall provide monthly training for the HAZMAT/Rescue team and provide in-service training for members of the medical team, according to State laws for emergency medical technician (EMT) certification maintenance;
- c. staffing and maintaining the Emergency Operations Center (EOC) and ensuring that a backup EOC is available. Both FETC facilities currently have a fully staffed and equipped on-site EOC and a backup EOC available in the communities. The contractor shall ensure that the current level of protection is maintained, at a minimum;
- d. providing staff to FETC's Emergency Response Organization (ERO). The contractor shall maintain staffing in the ERO to ensure response protection for both facilities, according to the sites' emergency response plans;
- e. maintaining FETC's public address system (MGN). The contractor shall maintain the public address system by keeping the system functional and in operating condition, and performing corrective action as a result of identified deficiencies in communications or other emergency drills;
- f. conducting annual fire drills. The contractor shall provide an annual timetable for fire drills and shall conduct fire drills according to the DOE-approved schedule. The drills shall include evacuation of employees from the buildings and trailers, in discrete groups. The contractor shall ensure that the accountability system is checked during the drills and shall perform corrective action to maintain a functional system. At least one drill shall be performed at other than normal business hours to ensure that evacuation procedures are known by all personnel and that a feasible accountability system can be operated at reduced manpower support levels;
- g. providing for a system of accountability for employees and visitors in conjunction with the security procedures. The contractor shall maintain evacuation plans and assembly areas for the facilities. The contractor shall provide personnel to maintain the system, including dissemination of accountability lists, fire warden coverage, fire warden training, and an active, accurate list of fire wardens;
- h. performing equipment management for the ERO. The contractor shall perform equipment management activities for the ERO, including keeping an active inventory, maintaining the equipment according to regulatory or consensus standards, ensuring that sufficient equipment and supplies are available to mitigate spills and leaks according to the findings of any hazards' assessment, and ensuring that members of the ERO have appropriate personal protective equipment;

- i. preparing or submitting information for emergency response reporting. The contractor shall compile information for the Emergency Readiness Assuredness Plan (ERAP). The contractor shall prepare and submit incident reports for any response that involves a call out of ERO personnel beyond the Incident Evaluation Team, or that could have a public impact. The contractor shall be responsible for submitting findings from the communications drills, training drills, and annual evaluated exercise;
- j. during normal duty hours, providing an on-scene commander and industrial hygienist at each site (MGN and PGH) to be available on-site for emergency response services and exposure monitoring;
- k. during other-than-normal duty hours, providing an accessible on-scene commander at each site (MGN and PGH) to be available for emergency response and other-than-normal operating conditions; and
- l. during other-than-normal duty hours, providing an industrial hygienist during project runs or other activities for which special safety precautions would be required.

1.3.2 Fire Protection Program Support. The contractor shall assist in the implementation and maintenance of a fire protection program. Elements of the fire protection program include, but are not limited to, the following:

- a. inspecting, testing, and maintaining fire suppression systems. The contractor shall provide fire suppression systems inspection, testing, and maintenance to ensure an operative system capable of protecting employees and property;
- b. maintaining facility fire protection equipment and systems. The contractor shall maintain fire protection systems and equipment, including fire extinguisher placement, inspections, and maintenance, and performing minor facility fire protection remediations in accordance with approved drawings;
- c. provide assistance in updating fire protection program plans. The contractor shall review and revise fire protection program plans annually to reflect current site practices, DOE, and regulatory requirements;
- d. providing fire hazards analysis and annual updates. The contractor shall provide an annual update to the existing fire hazards analysis and provide new analyses for any new facility that falls under the provisions for inclusion;
- e. providing technical reviews for life safety code compliance and fire protection facility feature and system modifications. The contractor shall provide expertise for technical reviews for life safety code requirements, compliance evaluations, and facility fire protection requirements;
- f. performing facility fire protection appraisals. The contractor shall prepare facility fire protection appraisals for existing facilities according to the cycle established by DOE;
- g. preparing and making available pre-fire plans. The contractor shall prepare the FETC's pre-fire plans and make them available to local fire departments servicing the areas where the facilities are located, and to on-site personnel who may need to have them (e.g., emergency responses personnel; site maintenance); and
- h. conducting training. The contractor shall provide annual fire extinguisher training. Educational materials shall be supplied to employees who are not in ERO positions. Fire wardens, HAZMAT technicians, and employees who serve on fire watches as part of the welding operations requirements shall be given annual hands-on fire extinguisher training.

1.3.3 R&D Safety Analysis Review System (SARS) Support. The contractor shall provide expertise in support of FETC's SARS processes. The support shall include:

- a. providing independent expert consultation, advisory, and facilitation services. The contractor shall provide expert consultation and facilitation support to the SARS efforts by serving as ES&H

representatives under the FETC R&D SARS process (approximately 20 actions per year); and

- b. providing independent assessor services. The contractor shall provide support in conducting the annual ES&H assessments required under FETC's R&D SARS process (approximately 40 actions per year).

1.3.4 Site Inspections Support. The contractor shall provide various inspection services for the following areas: ladders – the contractor shall conduct safety inspections for ladders to ensure their integrity and fitness for safe use; cranes, portable hoist and rigs, and elevators – the contractor shall provide maintenance and safety inspections for cranes, portable hoist and rigs, and elevators to ensure their integrity and fitness for safe use; and eyewash stations and emergency showers – the contractor shall provide for eyewash and emergency shower inspections to ensure that proper flow is maintained and that all units are operational and accessible.

The contractor shall provide consultation support by accompanying line managers on ES&H line management inspections (two scheduled per month). The contractor shall provide support by maintaining FETC's site inspection ES&H database, which includes entering inspection findings, generating corrective action recommendations, validating corrective actions taken, and generating reports.

1.3.5 Fire Alarm and Gas Alarm Network Support. The contractor shall provide services to support and maintain FETC's fire and gas alarms systems for the facilities. This activity shall include the following:

- a. establishing system requirements. The contractor shall establish the system requirements for monitor model, type, and placement in consultation with project personnel; and
- b. installing and testing of fire, gas, and network alarms. The contractor shall ensure that the fire and gas alarms are initially installed according to the established system requirements. The contractor shall test the system and provide an interface with R&D personnel who shall then be responsible for maintenance and calibrations of alarms under their jurisdiction.

1.3.6 Accident Investigations Support. The contractor shall provide accident investigation support to DOE including:

- a. conducting investigations of motor vehicle accidents;
- b. conducting investigations of employee injuries;
- c. obtaining statements from witnesses and taking photographs of accident scenes;
- d. recording circumstances and extent of injuries; and
- e. estimating cost of property damage, preparing a final report of findings, and providing recommendations to correct unsafe and unhealthful conditions.

1.3.7 Occurrence Reporting Support. The contractor shall provide occurrence reports in accordance with DOE Orders. The occurrence reporting task includes the following:

- a. entering the reports electronically via Personal Computer Occurrence Reporting and Processing System (PCORPS) into DOE Headquarters Occurrence Reporting and Processing System (ORPS);
- b. coordinating the investigation of occurrences and providing corrective action recommendations;
- c. maintaining a database of all occurrence reports using the PCORPS database;
- d. maintaining the computer hardware necessary to use the ORPS database; and
- e. identifying and analyzing trends in occurrences through the ORPS database.

1.3.8 General Safety Support. The contractor shall provide personnel and expertise to support general safety programs, including the following:

- a. **Lock out/tag out.** The contractor shall provide personnel and expertise to support the lock out/tag out program at the site, including training.
- b. **Confined space entry.** The contractor shall provide personnel and expertise to support the confined space entry program at the site, including training, signature authority for entrants, qualified entrants to support other safety programs in confined space, and attendants.
- c. **Fall protection.** The contractor shall provide personnel and expertise to support the fall protection program, including training.
- d. **Construction safety.** The contractor shall provide personnel and expertise to support the construction safety program, including safety briefings and training for contractors working temporarily on the site, and on site inspections.
- e. **Electrical safety.** The contractor shall provide personnel and expertise to support the electrical safety program, including training.
- f. **Visitor, contractor, new employee safety.** The contractor shall provide safety briefings for new employees, temporary or long-term contractors, and visitors. The contractor shall support FETC in providing personal protective equipment as required.
- g. **Workplace violence.** The contractor shall provide support to DOE's workplace violence program. Though the DOE order has not been finalized for this program, it is anticipated that the support required would be similar to that for other safety program areas and would include training (specialized for the emergency response organization, managers, and general employees, including development of computer-based training modules), record keeping, and program participation. The contractor may be required to assist with development of forms and procedures.

1.4 Industrial Hygiene and Occupational Medicine Compliance and Consultation Services

The contractor shall provide expertise for the broad category of industrial hygiene and occupational medical support services for the facilities. This activity includes program implementation and maintenance, such as:

1.4.1 Ergonomics Support. The contractor shall assist in the implementation and maintenance of FETC's ergonomics program. Ergonomics program activities include but are not limited to the following:

- a. implementing and maintaining a back injury prevention and safe lifting program. Elements of this program shall include education, work site analysis, training, and empirical data gathering for analysis with the NIOSH lifting equation;
- b. developing specifications for ergonomically related equipment as corrective action. The contractor shall ensure that corrective action is accomplished for workstations and work practices so that repetitive stress is reduced;
- c. providing expert consultation services for office and industrial workstation evaluations, including focused education and training;
- d. preparing a finding and corrective action report for each workstation evaluation. The contractor shall use an evaluation form to record evaluation findings and to track corrective actions; and
- e. updating the ergonomics handbook annually to reflect current regulatory and DOE requirements. In the absence of OSHA regulation, the contractor shall use NIOSH or consensus standards or best management practices to develop site guidance.

1.4.2 Personnel Exposure and Workplace Monitoring Support. The contractor shall assist in performing personnel exposure and workplace environment monitoring. The contractor shall assist in maintaining and calibrating personal monitoring equipment and supply personal monitoring equipment to personnel working in environments where there are potential exposures to noise, radiation, chemicals, and other personal safety hazards. Exposure and workplace monitoring shall include measurement of the following:

- a. **Noise.** The contractor shall provide personnel noise exposure and workplace environment monitoring to ensure that employees are properly entered into the hearing conservation program, and that no employee is exposed to noise levels above the OSHA permissible limits;
- b. **Chemicals.** The contractor shall provide personnel and workplace environment monitoring to ensure that employees are properly entered into FETC's medical surveillance program, and that no employee is exposed to unsafe occupational levels of unregulated chemicals per consensus standards and regulated chemicals per OSHA regulations or NIOSH recommendations;
- c. **Asbestos.** The contractor shall perform personnel and workplace environment monitoring to ensure that employees are properly entered into the medical surveillance program, and that no employee is exposed to unsafe levels of respirable asbestos per OSHA standards; and
- d. **Reproductive hazards.** The contractor shall perform personnel and workplace environment monitoring to ensure that employees are properly entered into the medical surveillance program and to ensure that no employee is exposed to unsafe levels of reproductive hazards.

1.4.3 Ventilation Support. The contractor shall support laboratory and process engineering functions by performing exhaust ventilation surveys. This task includes the following:

- a. performing face velocity measurements on existing and new hoods before their use. The contractor shall perform velocity measurements on existing and new hoods to assess compliance with FETC policy regarding face flow velocities in relation to the type of chemical used in the hood or process performed there. The contractor shall alert the responsible DOE representative and project personnel to deficiencies in hood performance and tag out noncompliant hoods;
- b. assessing performance of ventilation flow alarm systems in each fume hood and hazard control ventilation system; and
- c. assessing performance of local ventilation systems and devices for compliance with DOE determinations for proper performance level and alerting the designated DOE representative to any deficiencies. The contractor shall provide expert consultation and assistance to correct deficiencies.

1.4.4 Personal Protective Equipment (PPE) Support. The contractor shall support DOE requirements for PPE through the following activities:

- a. fit testing respirators. The contractor shall provide respirator fit testing services to FETC employees who must wear respiratory protection equipment for performing their jobs or as a part of the emergency response team; and
- b. identifying processes or tasks that require PPE. The contractor shall provide expertise to conduct PPE hazards assessment and to identify processes and tasks that require PPE. The contractor shall provide specifications for PPE that are compliant with OSHA regulations or consensus standards for use, materials, and construction.

1.4.5 Medical, Occupational Health, and Wellness Program Support. The contractor shall provide medical, occupational health, and wellness program support to the FETC, including but not limited to the following elements:

- a. performing comprehensive medical examinations and counseling, as determined by DOE;

- b. managing a hearing conservation program;
- c. providing medical referral service;
- d. performing cholesterol screening;
- e. providing emergency care;
- f. providing personnel to participate in the FETC's emergency response program as emergency medical responders and as official providers of patient medical history if an employee must be transported;
- g. providing Employee Assistance Program counseling or referrals;
- h. providing and administering immunizations and other injections;
- i. providing a link with industrial hygiene services to integrate industrial hygiene monitoring with medical care;
- j. providing medical surveillance through monitoring job tasks, physical evaluations, and conducting workstation visits;
- k. providing professional consultation to the ergonomics program evaluators and employees with occupational cumulative trauma;
- l. providing fitness assessments for employees entering positions within the emergency response organization for which medical surveillance is a regulatory requirement;
- m. providing fitness assessments for employees whose jobs require medical surveillance or whose jobs will require physical exertion, such as respirator use or climbing;
- n. providing training support to industrial hygiene personnel for programs such as hearing conservation;
- o. providing training for the bloodborne pathogens program;
- p. providing elements of a wellness educational program that include smoking cessation, general health, exercise and nutrition advice, and preventive health measures; and
- q. providing flu shots annually.

1.4.6 Radiation Monitoring Support. The contractor shall provide radiation monitoring (ionizing and non-ionizing) and radiation protection support. The contractor shall assess the risks/impact to human health based on exposure monitoring results. The contractor's support shall include the following:

- a. conducting leak testing of radiation sources;
- b. performing dosimetry calculations;
- c. conducting exposure monitoring; and
- d. conducting microwave leak/field strength monitoring.

1.5 ES&H Training and Consultation Services

The contractor shall assist FETC in providing core ES&H training to on-site employees. The following table, based on historic information, is offered as an example of the recurrent training offered at FETC. In general, the training attendance will be for employees in specific jobs. Exceptions are site-wide training, such as General Employee Emergency Response Training, HAZCOM training, waste minimization training, and fire extinguisher

education.

Representative Environment, Safety, and Health Training Courses		
Training	Typical Delivery Method	Frequency
Bloodborne pathogens	Lecture and video, computer-based training	Annual
Chemical hygiene	Video and reading procedures	New hires or personnel moving to a position that requires chemical handling
Confined space entrant/confined space rescue	Lecture, field practice, computer-based training	Annual
CPR	Lecture, hands-on practical	Annual
Detailed HAZCOM	Computer-based training	Triennial; new hires, or personnel moving to a position that requires chemical handling
Ergonomics	Focused training at the workstation	Upon request
ES&H awareness	Lecture	New hires
Fire prevention	General education through pamphlets	Annual
Fire extinguisher	Lecture, video, field exercise	Annual
First aid	Lecture, video	Annual
Forklift and scissorlift	Lecture, video, field exercise	Upon initial assignment, then triennial
General employee emergency response training	Computer-based training	Annual
Monthly HAZMAT training	Lectures, field exercise	Monthly
Two training drills and one exercise for emergency response organization per site	Field exercise	Every 4 months
HAZCOM refresher	Computer-based training	Annual
Hazardous waste handling	Lecture, video	Annual
HAZWOPER	Lecture, video, field exercises	Upon assignment, refresher annually thereafter
Hearing conservation	Lecture	Annual
Hoisting and rigging	Lecture, field exercises	Triennial
Laser operator safety	Lecture	New hire
Laser safety awareness	Lecture	As needed

Representative Environment, Safety, and Health Training Courses		
Training	Typical Delivery Method	Frequency
Lockout/tagout	Lecture, field exercises, computer-based training	Annual
New hire safety orientation	Lecture and video	New hires
Personal protective equipment	Lecture, video, practical	New hire or upon new assignment
Radiation protection	Lecture	New hire or upon new assignment
Respiratory protection	Lecture, video, practical	New hire or upon new assignment
Waste management, recycling, and hazwaste overview	Computer based training	Annual
Welding/hot work	Lecture, field exercises	Triennial, new hire, or upon new assignment
Specialized personal emergency response positions (non-HAZMAT positions)	Lecture	Upon assignment
Payloader and heavy equipment	Lecture, video, field exercise	Annual

1.6 Crosscutting Services

The contractor shall provide personnel and expertise to provide services that support the major comprehensive risk management programs and activities. These include the following activities:

- a. providing administrative support necessary to coordinate Federal and multiple contractor participation in the following programs and activities: FETC's Emergency Response Organization, Occurrence Reporting, Accident Investigation, Medical Surveillance, Training, Record Keeping and File Management;
- b. providing information to the following FETC databases or systems: audits and inspections database, ES&H centralized files, and ES&H training files; and
- c. providing quality assurance and quality control support to FETC's ES&H programs.

Variable Work. The contractor shall provide personnel and expertise to conduct off-site environment, safety, health, and quality audits and to provide consultation services in support of FETC activities, cooperative agreements, and memoranda of understanding. Activities include hazards assessments, regulatory compliance audits, air monitoring, and training development.

1.7 On-Site Corrective Action Services

Variable Work. The contractor shall provide expertise and personnel to support on-site ES&H corrective actions. These corrective actions include but are not limited to the following:

1.7.1 Lead and Asbestos Abatement Support. The contractor shall identify, quantify, and remediate lead- and asbestos-containing media on an as-needed basis.

1.7.2 OSHA and Life Safety Code Corrective Action Support. The contractor shall perform corrective actions as facility OSHA and life safety code deficiencies are identified.

1.7.3 Fire Protection Corrective Action Support. The contractor shall perform corrective actions as facility fire protection deficiencies are identified.

1.7.4 Directives Revision Support. The contractor shall review the combined FETC directives to ensure that they reflect the current site practices, DOE orders, and regulatory requirements. The contractor shall assist in revising the FETC's directives to reflect altered site practices, new or changed responsibilities of individuals, new requirements or regulations, or quality assurance measures. The contractor shall assist in revising or developing FETC directives as new, merged site standards are adopted.

1.7.5 Contaminated Facility Remediation Support. The contractor shall provide remediation support of on-site contaminated facilities.

1.8 Off-Site Remediation Services

The contractor shall provide personnel and expertise to support off-site remediation at FETC-owned sites, leased sites, or sites where FETC is the authority having jurisdiction. Current off-site remediation work is being performed at the Hoe Creek Underground Coal Gasification Test Site located near Gillette, Wyoming, the Rock Springs Oil Shale Retort Site located near Rock Springs, Wyoming, and the Rocky Mountain 1 Site and the "old" DOE Underground Coal Gasification Site near Hanna, Wyoming. During the course of this contract, other remediation sites may be identified requiring remediation support.

The contractor shall provide remediation support by performing activities such as:

- a. conducting the air sparging and aerobic bioremediation demonstration project at Hoe Creek, Wyoming;
- b. performing intermittent minor maintenance, including re-vegetation, at Hanna field sites in Wyoming;
- c. conducting field operations relative to groundwater remediation at Rock Springs, Wyoming;
- d. conducting pilot demonstration removal of source materials from the treatability zone at Rock Springs, Wyoming;
- e. ensuring remediation site(s) compliance with Federal, State and local requirements;
- f. providing support and assistance with regard to analysis, reports, and presentations;
- g. preparing analysis reports and presentations relative to current and planned operations and activities;
- h. investigating the location of abandoned wells in the area; and
- i. investigating other active waste sites.

It should be noted that the specific actions to be implemented will change annually based on the previous year's remediation results.

1.9 Deliverables

The following table is representative of the deliverables associated with Task 1.

Representative Deliverables for Risk Management Activities			
<u>Title of Deliverable</u>	<u>Format</u>	<u>Frequency</u>	<u>Work Breakdown Structure Reference</u>
Annual site environmental report	(Inputs to) Report	Annual	1.1.1
Air emissions inventory	Report	Annual	1.1.1
State air emission permit	Permit	As required	1.1.1
Emissions monitoring reports	Report	As required by regulatory body	1.1.1
Ozone-depleting substances inventory	Report	Annual	1.1.1
NPDES permit	Permit	Periodic renewal	1.1.2
Morgantown Utility Board permit	Permit	Periodic renewal	1.1.2
Industrial water (NPDES and MUB) discharge monitoring reports	Reports	Monthly	1.1.2
NPDES storm water discharge monitoring reports	Report	Monthly	1.1.2
<i>Legionella</i> monitoring reports	Reports	Quarterly	1.1.2
SPCC plan	Updated plan	Annually, and as needed	1.1.2
PPC plan	Updated plan	Triennially, and as needed	1.1.2
Groundwater monitoring reports	Reports	Annually	1.1.2
Groundwater monitoring plan	Updated plan	Annually	1.1.2
SARA Tier II requirement	Letter and report for DOE signatures sent to States of Pennsylvania and West Virginia, local fire departments, and local emergency planning centers	Annually	1.2.1
Chemical inventory	Updated database	Weekly updates to database	1.2.1

Representative Deliverables for Risk Management Activities			
<u>Title of Deliverable</u>	<u>Format</u>	<u>Frequency</u>	<u>Work Breakdown Structure Reference</u>
Chemical vulnerability analysis	Updated report	Update triennially	1.2.1
Mandatory ES&H training	Attendance lists, training plans	As needed per the DOE reviewed plans, most mandatory ES&H training requires annual refreshers plus new employee training, training for new assignments	Various sections, including 1.5
MSDS inventory	Updated database	Weekly updates to database	1.2.1
Materials/waste inventory	Updated inventory list	Updated as needed	1.2.3
Summary hazardous waste reports	Reports to Federal and state	Bi-annual	1.2.3
Waste Summary Report	Reports	Periodic	1.2.3
Analyses (such as waste, water, soil, etc.)	Reports	Per analysis, as needed	Various sections
ERAP	Updated plan	Annually	1.3.1
Exercise and drill plans (scenario development)	Plans	Annually (exercise), every three months (drills)	1.3.1
Exercise and drill findings and corrective action	Reports	Annually (exercise), every three months (drills)	1.3.1
Incident reports	Reports	As needed	1.3.1
Equipment inventory and inspections	Inventory lists, findings report	Annually	1.3.1
Timetable for fire drills	Plan	Annually	1.3.1
Fire drill findings and corrective actions	Report	Annually, per building and trailer	1.3.1
Directives review and generation	Plans and procedures - new or updates	Annually or as needed	Various sections
Fire protection program plan	Updated plan	Annually	1.3.2
Fire hazards analysis	Report	Annually	1.3.2

Representative Deliverables for Risk Management Activities			
<u>Title of Deliverable</u>	<u>Format</u>	<u>Frequency</u>	<u>Work Breakdown Structure Reference</u>
Fire protection appraisals	Report	Biannually and triennially, depending on building value	1.3.2
Pre-fire plans	Plans	Annually	1.3.2
Inspections	Reports	As requested	Various sections
Accident investigation reports	Reports	As needed, per reportable accident	1.3.6
Occurrence reports	Reports	As needed, per occurrence	1.3.7
Workstation evaluation findings report	Reports	As needed, per evaluation request	1.4.1
Ergonomics handbook	Updated handbook	Update annually	1.4.1
Exposure monitoring reports	Reports	Per exposure, as requested per category (for example, noise, indoor air, dosimetry)	1.4.2
Ventilation assessments for hoods, local, facility	Assessments	Report deficiencies annually per assessment schedule	1.4.3
Personal protective hazards assessment	Assessments	Per project area, as needed	1.4.4
Medical records	Medical surveillance, exam reports and results; assessment for respirator use fitness	Per employee, annually, as applicable	1.4.5
Radiation monitoring	Report	Leak testing results	1.4.6
Rock Springs steam/hot water - surfactant injection pilot demonstration reports	Reports	Monthly updates; Draft and final reports due	1.8
Monthly activity reports	Reports	Monthly update	Various

2.0 SITE MANAGEMENT SUPPORT

The purpose of this task is to implement, administer, and continuously improve cross-cutting site management services for the Federal Energy Technology Center (FETC). The support shall span both the Morgantown (MGN) and Pittsburgh (PGH) facilities, except where noted. Much of the work outlined is geared toward providing implementing requirements within existing DOE programs and processes necessary for regulatory and DOE Order compliance and consultation services. The work in this task includes, but is not limited to, the

following services:

2.1 Engineering and Technical Management and Consultation Services

The contractor shall provide general engineering, design, drafting, and drawing control support as assigned by FETC. The engineering support shall conform to FETC's Life Cycle Asset Management (LCAM) and Energy Management performance measures and DOE directives 430.1, 430.2, 5480.19, 5700.6C, and 5480.CM and shall include but not be limited to: technical consultation, assistance with engineering designs, construction inspections, and general drafting to include maintaining drawings, records, and layouts of buildings and facilities. FETC's performance agreements/expectations with DOE-HQ related to LCAM and energy management are available on FETC's homepage (www.fetc.doe.gov). Additional support shall be provided for energy management improvements on site, identifying maintenance worthy items for new buildings and systems, and providing drawing reproductions. The contractor shall deliver more specific site engineering support services, such as:

- a. providing drafting services (e.g., layout, detail, assembly, and schematics) for several types of drafting (e.g., civil, structural, electrical, instrumentation, mechanical, architectural, utility, piping, Geographical Information System [GIS], and process flow diagrams for construction and alterations of the facilities). All drafting shall be performed in accordance with FETC Procedures and electronically prepared utilizing AutoCAD or MICRO STATION computer aided drafting software. CAD-generated drawings, internally and externally created, shall be stored electronically, utilizing AutoEDMS data management system software. Non-CAD generated drawings shall be field verified and redrawn on CAD, as required, utilizing AutoCAD software. Drawing reproductions and reproducibles shall be provided as requested;
- b. providing technical consultation and assistance with engineering designs in the following areas: statement of work preparations, construction cost estimates, design reviews, design package preparation, construction closeout activities, personnel move coordination (e.g., space planning and layouts), HVAC layout and analysis with Indoor Air Quality (IAQ) considerations, engineering surveys with an Electronic Distance Measurement (EDM) Total Station system, energy management and controls support, and systems furniture general arrangements. Value engineering techniques and principles shall be employed to ensure that the best economical engineering solutions are achieved for all projects. All assigned tasks shall be executed in accordance with the FETC On-Site Project Guidelines manual for assurance of compliance with all pertinent codes, regulations, standards, orders, and procedures;
- c. performing quality control inspections when required or requested. The inspections, based on Inspection Plans, shall assist FETC in ensuring that the performance of the construction activities are acceptable to DOE and meet all requirements on the drawings, statement of work, and applicable codes and standards. All unexpired warranties for past construction projects shall be administered to protect FETC's interests in previously installed systems and equipment;
- d. performing configuration management for buildings and facilities by maintaining drawings, records, construction files, and operation/maintenance manuals and by reviewing and/or updating applicable standards, procedures, and quality control methods;
- e. revising record drawings to incorporate "as-built" information as the data become available;
- f. maintaining, revising, and distributing FETC's Technical Site Information Book;
- g. supporting Condition Assessment Survey (CAS) Program by performing file information searches and assisting in the identification of maintenance worthy items for new buildings and systems. The contractor shall learn to use CAS instruments (infra-red camera, ultra-sonic flow meter, etc.) and assist in taking readings and measurements, thereby identifying conditions that require maintenance (such as site caulking, weatherproofing, door replacements, window replacements, roof replacements, etc.);
- h. providing support to energy management functions. The contractor shall assist in the identification of

potential on-site energy savings projects, arrangement for energy improvement projects, and the monitoring and verification of any implied energy savings; and

- i. providing general engineering design support. The contractor shall maintain the capability to respond to electrical engineering design support requests on a limited basis. Projects that are primarily electrical in nature shall be forwarded to DOE's electrical engineer point-of-contact for design.

Deliverables. The contractor shall provide monthly activity reports and monthly project status reports (showing project title, brief description, work order numbers, completion date, and status). The contractor shall also track and report the following measures on a monthly basis: Procurement and Subcontracts Information – the report shall display any projects for which procurement and subcontracting resources are committed and final cost of all purchases and completed projects, and Drafting Information – the number of walkup prints run and the associated copy time required shall be logged to track the drafting time not reflected by work orders. The number of new and modified facilities-related drawings produced shall also be tracked.

Variable Work. The contractor may assist in providing personnel and expertise (either on-site or home office support) to conduct off-site energy audits, and to provide CAD services, energy management services, and engineering design and inspection services in support of FETC activities, cooperative agreements, and memoranda of understanding. These activities may include facility/building/equipment modifications, and consultation services in energy management, space utilization, and site planning.

2.2 Life Cycle Asset Management and Consultation Services

The contractor shall support the general site management of FETC, providing services conforming to FETC's Life Cycle Asset Management (LCAM) and Energy Management performance measures and DOE directives 430.1, 430.2, 5480.19, 5700.6C, and 5480.CM (configuration management). FETC's performance agreements/expectations with DOE-HQ related to LCAM and energy management are available on FETC's homepage (www.fetc.doe.gov). The services are mainly in support of maintaining, repairing, operating, and servicing systems that are installed as part of the basic facility (non-research) and are essential to the normal functioning of the facility. Non-research operations generally begin at an interface defined as at and before the first shut-off valve from the main feeder for gases and liquids or at the panel box or wall outlet for electrical service. Examples where this maintenance interface will apply are systems for nitrogen, instrument air, natural gas, cooling water, electricity, etc., for which general maintenance upstream of the first shut-off valve will be performed by this contract, and downstream will be performed by a research operations contractor.

2.2.1 Maintenance Management Support. The contractor shall assist in maintaining buildings and general-purpose (non-research) equipment by:

- a. maintaining, repairing, and servicing general facilities, structures, equipment, utility systems, and surfaced areas. All work request tasks shall be processed through FETC's existing computerized maintenance management system. General facility equipment includes: heating, ventilation, air conditioning, and refrigeration; city water; fire protection, and natural gas distribution systems from the city or utility point of entry throughout the FETC facilities;
- b. maintaining, repairing, and servicing Allegheny Power Company's electrical distribution system which includes electrical power transformers, respective stations, and disconnect switches through secondary electrical sub-panels and motor control centers;
- c. maintaining, repairing, and servicing utility systems which include heating and process steam generation, distribution, condensate return, process water, and compressed gases from supply source to the facility, up to and including any branch shut-off valves;
- d. performing road maintenance including, but not limited to, snow removal from roads and parking areas;
- e. maintaining infrastructure and repairing sanitary, storm, and contaminated waste-water removal underground distribution systems;

- f. maintaining painted surfaces associated with facility and research structures requiring surface preparation and specialized paint/painting techniques (PGH and MGN); the contractor shall perform painting and sealing of exterior/interior building surfaces (MGN).
- g. providing emergency support on a 24-hour per day basis should facility equipment failure impact FETC's mission;
- h. maintaining and repairing security fence lines and gates; and
- i. providing limited certified welding capabilities as approved through FETC's Quality Assurance and Control Program.

The contractor shall also provide support by:

- j. proposing and implementing updated resource management plans to meet the maintenance demands of the site;
- k. providing the following maintenance infrastructure: trained technicians; processes for planning and scheduling of work activities; preventive maintenance procedures; equipment history and maintenance activity documentation; data analysis; root cause determinations; and response procedures to maintenance requests; and
- l. documenting and entering into the computerized maintenance management system, applicable data related to the requirements of FETC's Maintenance Application Specification procedure (e.g., all maintenance-worthy items shall be identified, data plate information gathered, and preventive maintenance procedures developed).

2.2.2 Life-Cycle Asset Management Support. The contractor shall provide support consistent with requirements of DOE Order 430.1 by:

- a. providing input as required and requested for the development and processing of FETC's Site Development Plan, the Annual Maintenance Budget, the Deferred Maintenance Reporting Requirements, and the Maintenance Crosscut Budget. The information contained in the database of the computerized maintenance management system shall be kept current, reports generated, and the data analyzed in support of this effort;
- b. updating (as required by procedure or request) the CAS program at FETC. The information contained in the database of the computerized condition assessment information system (CAIS) shall be kept current through the downloading of inspection information from the individual surveys and the data analyzed as required to assist in this effort;
- c. performing inspection assessments as required by procedure or request and uploading all CAS data into the facility information management system (FIMS) and CAIS databases as appropriate; and
- d. utilizing FETC-provided diagnostic equipment such as the vibration analyzer, Dranetz power quality analyzer, infrared camera, ultrasonic devices, etc., to evaluate existing equipment to predict corrective maintenance initiatives prior to equipment failure.

2.2.3 Services Management Support. (Non-research) maintenance of delivery systems shall include preventive, corrective, and predictive activities as required by procedure and approved industry standards and practices. The contractor shall provide assistance support by:

- a. operating, maintaining, and repairing all utility service systems including ancillary components;
- b. providing support for general site management through the operation of the service systems which include steam, condensate return, nitrogen, compressed air, heating and process steam generation, process cooling water, bulk liquid nitrogen, and wastewater treatment plants;

- c. operating, maintaining, and repairing the boilers, cooling tower, chillers and pumps, air and inert gas compressors, wastewater treatment plants, and ancillary components for these systems;
- d. providing steam, compressed air and gases, and process cooling water as required to meet FETC's mission; and
- e. operating and maintaining compressed gas cylinder storage area and services.

2.2.4 Modification Management Support. The contractor shall provide modification management assistance support of buildings, general purpose equipment, utility systems, and surfaced areas by:

- a. altering and modifying facilities, equipment, utility systems, and surfaced areas based on approved plans and drawings. This also includes any repair by replacement; and
- b. providing subcontractual support if contractor core resources are not sufficient to maintain a manageable work backlog or to meet critical priority work schedules (variable work).

2.2.5 Central Work Control System Management Support. The contractor shall provide assistance support by:

- a. operating a central work control system according to FETC and DOE procedures and approved industry standards. The central work control system shall be operated through an existing computerized maintenance management system;
- b. planning and scheduling activities to determine resource and material requirements and to ensure their availability prior to scheduling the requested work; and
- c. tracking each work request from authorization, planning, and scheduling through completion and/or cancellation.

2.2.6 Motor Pool Management Support. The contractor shall provide support by:

- a. operating the motor pool; and
- b. providing preventive and corrective maintenance activities on station vehicles and station equipment, including, but not limited to: cars, pick-up and heavy-duty trucks, material handling equipment, tractors, tow motors, loaders, electric carts, and miscellaneous portable items such as pumps, welders, generators, compressors, snow removal blades, and salt spreaders (exception: grounds maintenance equipment). The necessary documentation and record keeping shall be maintained and submitted to FETC as required by procedure and request.

2.2.7 Shuttle Service and Transport Support. The contractor shall provide driver shuttle/messenger service support between FETC's PGH and MGN sites, Monday through Thursday, on a preset schedule or as directed by the COR. The contractor is authorized to use Government vehicles for this service. Services shall include, but not necessarily be limited to, the following:

- a. transporting office personnel and visitors between the sites;
- b. delivering messages, documents, packages, and correspondence to various business concerns or government agencies;
- c. obtaining receipts for articles delivered and keeping a log of items received or delivered, and
- d. performing miscellaneous errands, such as carrying samples and packages.

Variable Work. Upon special authorization, the contractor shall provide local delivery and transportation services. The contractor is authorized to use Government vehicles for this service.

2.2.8 Facility Safety Analysis Review System (SARS) Consultation Support. The contractor shall provide support by:

- a. assisting in the preparation of SARS packages as assigned by DOE to obtain operating permits for new or modified facilities (MGN);
- b. assisting FETC's Site Operation Division in follow-up actions associated with Facility SARS recommendations and conditions; and
- c. maintaining and cataloging SARS information on computerized diskettes as well as file copies.

2.2.9 Quality Assurance (QA)/Quality Control (QC) Support. The contractor shall provide support by:

- a. providing support in the areas of QA procedure and program development and revision; and
- b. providing miscellaneous support such as conducting QA reviews, conducting code interpretations, assessing welding quality, and performing supplier audits.

Deliverables. The contractor shall provide the following deliverables: monthly general activities reports and monthly report on maintenance performed on FETC-owned or -leased equipment. The contractor shall obtain and track on a semi-annual basis the following: (1) time performance data – percentage comparisons for closed work orders (based on estimated hours to actual hours in three categories: less than, equal to, and greater than) by total for facility and project-related work; (2) date completed performance data – percentage comparisons for closed work orders (based on planned completion date to actual completion date in three categories: less than, equal to, and greater than) by total for facility and project-related work; and (3) total maintenance cost per building data – the total maintenance cost (labor and material) for each building.

2.3 Property Management Services

Property management support services shall be provided to FETC and performed in accordance with appropriate regulations, supplemented by internally developed procedures. The scope of this support includes the following annual activities: (1) inventorying approximately 2,600 line items of accountable property; (2) tagging and accounting for approximately 500 new line items of accountable property; (3) assisting in the performance of approximately 50 contractor property system reviews; (4) retiring approximately 168 DOE contracts; and (5) processing into Procurement Automated Data System (PADS) approximately 1,800 award actions.

2.3.1 On-Site Property Management Support. The contractor shall provide efficient control and utilization of Government-owned property consistent with Federal, DOE, and organizational directives (e.g., Federal Property Management Regulations [FPMRs], DOE PMRs, and FETC Property Management Instructions [PMIs]) to control, protect, preserve, and maintain government property. The contractor shall support this function by:

- a. operating and maintaining an automated accountable property management system using bar code technology;
- b. establishing and maintaining relationships with FETC organizational entities with personal property management responsibilities to ensure that priorities are met within the organization;
- c. conducting physical inventories of Government property as frequently as required by DOE PMR 109-1.5106-5. Inventory-by-exception techniques shall be used to inventory sensitive and capital equipment. Precious metals, as defined in DOE PMR 109-27.53, shall be inventoried on an annual basis;
- d. maintaining the Energy Asset Disposal System (EADS);
- e. providing support for pre-award, award, administration, and close-out of all DOE used energy-related equipment grants;

- f. maintaining local excess and equipment-held-for-future projects (EHFFP) data bases;
- g. providing for the storage of equipment not required. This equipment shall be tagged and stored as excess;
- h. managing and controlling access to FETC's scrap facility (only non-contaminated scrap metal shall be accumulated in the scrap holding facility), including ensuring that property retirement and disposal procedures are followed and that scrap is removed according to schedule. Disposal of property shall be in accordance with applicable rules and regulations;
- i. preparing property management reports as required by DOE PMR 109-1.15148. In addition, the contractor shall prepare monthly FETC plant and equipment reports and annual precious metals inventory reports;
- j. providing support in the areas of safeguarding, such as access, storage, and accountability of all EHFFP, critical spares, excess property, and furniture. The contractor shall maintain a check-in/out system maintained through the Shipping/Receiving area for access to the property area (EHFFP, Excess, Sales, Furniture, etc.). The contractor shall review any equipment required for future FETC programs for retention and shall categorize and store equipment as EHFFP, spares, or equipment pool; and
- k. providing furniture management, tool crib items, and furniture key control support.

2.3.2 Off-Site Property Management Support. The contractor shall provide support for the administration of property in the possession of off-site FETC contractors by:

- a. obtaining and processing reports from awardees for input into the off-site property database;
- b. coordinating the complete disposition of excess property submitted from off-site government contractors;
- c. assisting DOE property management specialists in reviewing and appraising contractors' property management systems to assess application of written policies and adoption of processes that promote the efficient and effective use of Government property;
- d. coordinating the submission and review of contractor's final inventory of property;
- e. maintaining records of organizational loan agreements;
- f. providing financial and property code input into FETC financial accounting systems; and
- g. providing timely and accurate submission of required reports, as well as preparation of requests for loan, borrow, transfer or retirement of property.

2.3.3 Materials Management Support. The contractor shall provide for the management of storeroom items (e.g., item issuance, inventory control, and maintenance of stocked items) in the most practical and economical manner consistent with the FETC's program needs and applicable laws and regulations. The FETC storeroom (Building 24) shall be located at the MGN site. The storeroom operating hours shall be from 7:00 a.m. to 10:00 a.m. and 1:00 p.m. to 3:00 p.m., Monday through Friday, excluding Government holidays. The contractor shall provide for the management of the warehouse, which includes storage and control of all bulk stores and critical spares. The contractor shall provide support by:

- a. processing material issue requests through either personal pickup, site mail, LAN, or voice mail;
- b. maintaining and distributing an annual storeroom stock catalog and a office supply stock catalog;
- c. tracking all stock transactions through a computerized inventory control system;

- d. conducting physical inventories of all storeroom items in accordance with FETC, DOE, and Federal regulations to ensure record accuracy;
- e. returning non-contaminated "used equipment/material" to stock for re-issue or placement as EHFFP. The contractor shall review any equipment required for future FETC programs for retention and store equipment as EHFFP, spares, or in the equipment pool;
- f. controlling access to the storeroom/warehouse (which is a secure building utilized as an enclosed storage area for a variety of items, including low-frequency-use articles, storeroom stock, and EHFFP); and
- g. providing delivery service to/from the warehouse to meet customer demands.

2.3.4 Material Transportation Management Support. The contractor shall provide necessary transportation and traffic management support for incoming materials. Incoming materials shall be received at the centralized receiving facility at FETC's MGN site. The scope of this support includes: receiving approximately 30,000 packages, shipping approximately 2,000 packages, and conducting approximately 400 quality inspections each year. The contractor shall provide additional support by:

- a. completing claims on incoming shipments for problem orders;
- b. notifying the requisitioner of the receipt of the material(s) and coordinating pickup and acceptance of these materials;
- c. maintaining a complete audit trail to minimize/discourage waste, fraud, and abuse;
- d. providing delivery of storeroom stock, procured items, and other stored materials to the MGN and PGH facilities;
- e. inspecting material for physical damage and purchase order requirements, as well as ES&H requirements and quality control requirements (technical inspections of material specifications shall remain the responsibility of the requestor);
- f. checking and accounting for all required documentation;
- g. reviewing all freight invoices prior to payment;
- h. filing freight claims for over billing or carrier negligence;
- i. coordinating outgoing shipments. The contractor shall ensure that shipments of hazardous materials are made in accordance with regulatory requirements regarding proper marking and packaging; and
- j. selecting transport mode and carrier based on the ability to perform transportation services in a satisfactory and economical manner by taking full advantage of Federal and DOE-wide transportation contracts.

Deliverables. Deliverables include the following reports: Monthly Activity Report; Fact sheet Submittal to OSTI (Quarterly); Property Utilization Report (Annually); Contractor Property Report (Annually); SRS Semi-Annual Report; Plant & Capital Equipment Report (Monthly); Semi-Annual Precious Metals Report; Physical Inventory Report (Annually), and Supply Activity Report (Annually).

3.0 PROGRAM MANAGEMENT SUPPORT

The purpose of this task is to provide cross-cutting program support services to the Federal Energy Technology Center (FETC). The support shall span both the Morgantown (MGN) and Pittsburgh (PGH) facilities, except where noted. The work in this task includes, but is not limited to, the following services:

3.1 Management Information Systems Services

The contractor shall support the operation and maintenance of the various management information systems in the following program areas: acquisition and assistance, budget and financial management, and human resources, for which the FETC has reporting responsibility. In addition, the contractor shall provide a broad spectrum of management and administrative support in these areas. This support spans both MGN and PGH facilities, except where noted.

3.1.1 Acquisition, Finance, and Budgeting Management Support. The contractor shall furnish the resources required to operate, maintain, input data into and report from the various information systems in support of FETC's Acquisition and Assistance Division (AAD) and the Budget and Financial Management Division (BFMD). The contractor shall provide: documentation and records maintenance support; unsolicited proposal support; procurement and assistance data system support; administrative support for simplified acquisitions and the processing of invoices for payment; and closeout function support. Certain functions will be primarily in support of the PGH or MGN facilities as designated below.

The contractor shall provide the following support to FETC's Acquisition and Assistance Division (AAD) to include, but not be limited to:

- a. operating and maintaining various AAD information/operations systems;
- b. collecting, processing, entering, and validating data for these systems. Systems requiring support shall include, but not be limited to, the following:
 - Business Management Information System (BMIS)
 - Close Out System (MGN)
 - Commercial Payments System (CPS) (PGH)
 - Contract Writing System (FARA)
 - Contractor Opportunity Forecast System (COFS)
 - Deliverables Tracking System (DTS) - to be determined (PGH)
 - Property Administration and Management Systems (PADS)
 - Small Purchase System (SPS)
 - Subcontract Reporting System (MGN)
 - Technical Reporting Information System (TRIS)
 - Unsolicited Proposal Tracking System – to be determined;
- c. data entry for the above systems includes: editing for completeness, verifying for validity, and entering the required forms/data into the system; establishing data editing and entry procedures, including rejection and correction steps; reviewing all data processing problems incurred and being responsible for follow-up and corrective actions; securing the interpretation and clarification of the information as requested by the preparers and users relevant to completion and submission of system data; generating correspondence for Federal contact signature, and distributing reports and correspondence to points of contact in FETC's BFMD and AAD;
- d. facilitating the receipt and distribution of all incoming and outgoing correspondence and contractual documents, and maintaining administrative control of the flow of documents internal and external to AAD (PGH);
- e. maintaining AAD file rooms and library, relative to upkeep of the files, reference materials (including contractor/vendor/GSA catalog files), and the disposal of records (PGH);
- f. receiving, distributing, and maintaining copies of updates to Federal Acquisition Regulations (FAR), Federal Information Resources Management Regulations, DOE Acquisition Regulations (DEAR), DOE Acquisition Letters, and DOE Financial Assistance Letters, Acquisition and Financial Assistance Guides, special distributions, and maintaining distribution lists for policy correspondence (PGH);
- g. preparing federal express mail forms, letters, memorandums, and labels (PGH);

- h. maintaining AAD forms library (PGH);
- i. creating report/invoice/modification backup files and subcontract files for new awards (PGH); maintaining current and previous year files (PGH); maintaining current and previous year letter files (PGH), award letter files (PGH); current and previous years weekly reports, and maintaining files for contractual instruments;
- j. distributing, photocopying, and mailing solicitations, grants, contracts, cooperative agreements, interagency agreements, modifications, and simplified acquisition documents (PGH);
- k. providing commercial payments support as required (PGH);
- l. providing closeout support as required, such as receiving, sorting, and processing contractor/grantee vouchers submitted to the FETC for payment; verifying funds availability, current completion date, and that vouchers do not exceed obligated amounts as indicated on the automated Commercial Payments System (CPS); entering vouchers in the CPS Automated Invoice Log (History) and preparing vouchers for payment approval and signature; distributing approved vouchers to appropriate parties (i.e., Oak Ridge Financial Service Center), and responding to incoming correspondence and telephone calls concerning vouchers or unpaid balances; and
- m. providing Procurement Automated Data System (PADS) support to include: operating and maintaining support for PADS; responding to requests for information from the tracking system and maintaining all PADS files; providing data collection and data input from the Procurement Request and Individual Procurement Action Report (IPAR) into PADS and validating entry after input; obtaining on-line factual data credit reports and generating standard reports, and generating and maintaining statistical procurement graphs and annual view graph requirements; acting as the liaison with DOE Headquarters for PADS assistance; providing Dun & Bradstreet credit reports and serving as the focal point for inquiries related to the completion of required PADS documents; providing ad hoc reports for PADS-related inquiries, and maintaining the Subcontract Reporting System (SRS) and satisfying semi-annual and annual reporting requirements to Headquarters.
- n. providing unsolicited proposal (USP) administrative support to the DOE Unsolicited Proposals manager to include, but not limited to: weekly USP status log, pre-evaluation log, award acceptance memos, follow-up of delinquent ESP actions, maintenance of USP documentation files, response to USP information/status inquiries, and other administrative reporting as required.

The contractor shall provide the following support to FETC's Budget and Financial Management Division to include, but not be limited to, performing:

- o. information processing travel support;
- p. transportation management-related support for Government Bills of Lading (GBL's) processing and commercial payments;
- q. routine information collection, processing, data entry, and report generation for budget and finance systems, such as the Departmental Integrated Standardized Core Accounting System (DISCAS) (PGH), the Business Management Information System (BMIS), and FETC Reporting Module (FRM).

The contractor shall provide information collection/processing, data entry, and report generation support for DISCAS (and potential follow-on systems), which includes:

- r. recording obligations for contracts, grants, interagency agreements, and other entries (PGH);
- s. coordinating, through the Oak Ridge Financial Service Center (ORFSC), invoice payments for all obligation instruments (PGH);
- t. providing support to ORFSC in obtaining certain approvals for procurement instruments (PGH);

- u. reviewing and reconciling DISCAS- and ORFSC-generated reports as related to payments (PGH);
- v. providing support for reporting into the Financial Information Subsystem (FIS) (PGH); and
- w. recording receipt of checks in check log and preparing all checks received for deposit into the Federal Reserve Bank.

The contractor shall provide information collection/processing, data entry, and report generation support for Fossil Energy BMIS (and potential follow-on systems), which includes:

- x. assisting in the design of the new Fossil Energy BMIS;
- y. providing data collection for, data entry into, and updating BMIS for activities/projects/programs throughout their life cycle (e.g., program execution plans, carryover, deobligations);
- z. generating and distributing BMIS reports;
- aa. conducting periodic reconciliations of BMIS database; and
- bb. assisting in Fossil Energy BMIS-related training.

The contractor shall provide administrative support, data entry, data analysis and information retrieval support, and management assistance to FETC's Human Resources Division. Specific duties shall include:

- cc. data entry support to the Corporate Human Resources Information System (CHRIS) database; and
- dd. providing support to the training office to include (1) updating spreadsheet daily for tracking purposes (payment, evaluations, completion of training, college courses, assigning purchase orders numbers, and group training); (2) generating reports from the Departmental Corporate Human Resources Information System for employee training histories and ad hoc reports as requested by the training coordinator.

The contractor shall be responsible for providing support to FETC's travel manager function. This support shall include:

- ee. preparing Government Bills of Lading (GBL's) for commercial and personal property shipments and arranging for shipments;
- ff. providing efficient and effective travel management support services by coordinating travel arrangements for all Government- and non-Government-authorized travelers for FETC, NPTO, WETO, and ARC;
- gg. assisting in managing the Travel Manager database, archiving the information, and utilizing Travel Manager software, as well as assisting travelers in utilizing the Travel Manager software;
- hh. performing manual and automated logging into DISCAS and other systems/logs of travel- related documents such as travel voucher, travel itineraries, travel authorizations, airline tickets, and travel reimbursements (PGH);
- ii. preparing travel authorizations as required by the Government, validating travel arrangements, distributing tickets/travel information, travel delinquency notices (PGH);
- jj. auditing travel authorizations/vouchers and assisting with other financial services such as: data entry, data collection, preparation of financial worksheets, prompt payment reporting, and delinquency statements; and
- kk. maintaining travel-related files and forms (foreign travel authorizations, travel vouchers, local travel

claims, miscellaneous claims, GSA Government Contractor payments and reports, PCOS claims, TMC reports, etc.) for FETC (PGH), NPTO, WETO, and ARC.

Deliverables. The contractor shall provide: standard activity reports on a weekly, biweekly, and monthly basis; quarterly and annual prompt payment report, and any other additional reports required by AAD, BFMD, and HRD.

Travel Manager Deliverables. The contractor shall provide a monthly status report, culturegrams (related to foreign travel), travel packets (e.g., travel authorization, airline ticket, itinerary, tax-exempt certifications, itinerary/expense sheet), and copies of the DISCAS Powerhouse Travel Charge-to-Division summary report weekly. The contractor shall also perform a monthly update of the Travel Manager database with per diem rates.

3.2 Administrative Services

The contractor shall provide a variety of cross-cutting administrative services supporting FETC's program areas in the following areas:

3.2.1 Office Management Support. The office management support functions may be re-distributed within or among Offices at the two facilities on an as-needed basis. Inherently government office management functions shall not be performed by the contractor. The contractor shall perform the following clerical and administrative duties:

- a. typing of general correspondence (letters, memoranda, and reports) ensuring conformance with the FETC Correspondence Guidelines and using FETC's standard software programs (i.e., WordPerfect 6.1, Excel 5.0, Lotus 1-2-3, Release 4);
- b. preparing travel in accordance with established FETC travel procedures;
- c. distributing incoming mail to appropriate personnel;
- d. answering telephones and referring callers to appropriate personnel;
- e. copying and distributing correspondence and reports;
- f. sending, receiving, and delivering faxes;
- g. collecting data for use in various documents;
- h. utilizing and maintaining data bases and information systems;
- i. greeting visitors, and escorting them to the appropriate office or arranging for the responsible FETC employee(s) to meet them;
- j. preparing presentation materials using FETC standard presentation mediums;
- k. preparing purchase and storeroom requisitions, ensuring that items are received and distributed;
- l. delivering concurrence packages and other items between buildings and offices on-site, as needed;
- m. establishing and maintaining government files in accordance with the established Records Management procedures;
- n. coordinating logistics (such as scheduling) for meetings, events, inspections; scheduling conference rooms and coordinating meeting logistics; and
- o. performing general clerical duties as necessary.

Variable Work.

- a. The contractor shall provide court stenographer services to FETC, as necessary.
- b. The contractor shall also provide temporary clerical services as required by FETC.

3.2.2 Reception Management Support. The contractor shall be responsible for maintaining a reception area at FETC's MGN facility. This function shall include:

- a. answering and transferring telephone calls; taking messages, and receiving items from van shuttle driver and ensuring receipt by appropriate office;
- b. registering visitors and issuing visitor badges;
- c. maintaining the visitors registry and security data base;
- d. greeting visitors and tour groups and arranging for the responsible FETC employee(s) to meet them;
- e. maintaining a visitor marquee;
- f. managing and maintaining the lobby area;
- g. maintaining foreign visitor forms;
- i. issuing employee parking permits for off-site parking on the WVU campus; and
- j. maintaining safety equipment (lab coats, safety glasses, and hard hats) for visitors' use.

Variable Work. At FETC-PGH, the contractor shall provide reception management support as requested. This functions shall include:

- a. answering and transferring telephone calls and taking messages;
- b. greeting visitors and tour groups and arranging for the responsible FETC employee(s) to meet them;
- c. maintaining lobby conference room marquee and director marquees;
- d. managing and maintaining the lobby area;
- e. maintaining and replenishing display of brochures, maps, directions, and other printed informational materials;
- f. signing for receipt of supplies, express mailing, UPS deliveries, etc., and ensuring timely receipt by appropriate person;
- g. providing clerical support (general typing, copying, relaying messages) for those using the lobby area and conference rooms; and
- h. sending and receiving items between sites via van shuttle, ensuring timely receipt by appropriate office.

3.2.3 Conference Room and Audiovisual Management Support. The contractor shall be responsible for managing and maintaining the conference rooms at the MGN and PGH facilities. Specific duties shall include:

- a. scheduling conference, assembly, and teleconferencing rooms (including the Building 922 Conference Center in PGH and the Building 26 Assembly Room facilities in MGN);

- b. ensuring conference room set-up is configured to specific needs of users; and
- c. ensuring audiovisual equipment required by meeting attendees is in place and that any specific requirements (videotaping, audio taping) are met; and
- d. handling requests for audioconferencing.

Audiovisual services shall include:

- e. providing logistical support, user assistance, and system reservations;
- f. ensuring all audiovisual equipment is in working condition;
- g. handling all aspects of audiovisual needs for on-site and off-site meetings;
- h. providing and operating overhead and 35 mm slide presentation equipment;
- i. providing still photography services (e.g., taking pictures) for meetings;
- j. providing videotaping services; and
- k. providing specifications for ordering new audiovisual equipment.

Deliverables. The contractor shall track the number/hours of scheduled video conferences and the number of audioconferencing requests and report this information monthly to the COR.

3.2.4 Conference Management Support. The contractor shall provide conference management support functions for FETC. Functions to be performed shall include:

- a. reviewing and suggesting potential locations for holding meetings;
- b. providing liaison and coordinating activities with the FETC cafeteria or other caterers for food service functions associated with FETC conferences, meetings, and special events;
- c. overseeing service delivery for cafeteria services related to registration, morning and afternoon breaks, meal functions, poster sessions, and meetings sessions;
- d. negotiating and signing contracts with off-site meeting facilities in the event that the FETC conference center is not available for a function;
- e. preparing preliminary budgets for meetings and securing FETC approval;
- f. organizing and printing meeting announcement flyers;
- g. publicizing meetings and conferences in appropriate technical and professional journals;
- h. developing and maintaining listings of potential attendees with mailing addresses and other related data;
- i. responding to all telephone inquiries and written correspondence concerning the meetings;
- j. mailing meeting announcements and flyers (two distributions for each meeting) to all those on the invitation list;
- k. arranging and coordinating hotel accommodations for meals, meeting rooms, and necessary equipment;

- l. meeting with hotel staff to review and discuss all aspects of hotel logistics for planned meetings;
- m. collecting all meeting fees and, when applicable, invoicing any attendee for outstanding fees;
- n. assembling papers to be presented at the meeting/conference and arranging for the electronic distribution or publishing of the proceedings;
- o. providing proceedings, office supplies, signs, and posters and their transportation to and from the meeting;
- p. staffing the registration desk;
- q. obtaining and processing invoices itemizing expenses at the end of the meeting;
- r. handling requests for conference proceedings subsequent to the meeting;
- s. submitting a preliminary accounting report (within 60 days from the completion of the meeting) listing the source of all meeting income, all meetings expenses and distributions of the excess income over expenses (if any); and
- t. issuing a final financial report (within 120 days of meeting) reconciling all bank accounts and any outstanding invoices.

Variable Work. The contractor shall be responsible for staffing the registration desk and other conference activities as needed.

Deliverables. The contractor shall provide a monthly activities report as well as provide conference attendee survey forms to all conference attendees to measure customer satisfaction.

3.2.5 Word Processing/Desk Top Publishing Support. The contractor shall provide the following word processing and desk top publishing support functions for both the MGN and PGH facilities:

- a. typing and conversion of documents from hand-written, electronic, or audio-recorded sources, and scanning documents from paper to electronic form;
- b. producing technical reports;
- c. creating tables, graphs, and view graphs;
- d. maintaining various databases and developing new databases as requested;
- e. providing desk top publishing services;
- f. providing support for the production of the FETC newsletter;
- g. establishing and maintaining a record of services provided; and
- h. providing back-up to the reception desk (MGN).

Deliverables. The contractor shall track and report the following on a monthly basis to the COR: number of jobs (large and small) submitted and completed; turn-around time; and average back-log time/number.

3.2.6 Telefacsimile Support.

The contractor shall provide the following telefacsimile services at the PGH site. These services shall be at a single, central location (e.g., co-located with copy center):

- a. operating telefacsimile equipment;
- b. sending and receiving non-sensitive messages and notifying recipients of their arrival;
- c. maintaining supply levels sufficient to provide uninterrupted telefacsimile service; and
- d. establishing and maintaining a usage record system for telefacsimiles and appropriate files.

Deliverables. The contractor shall provide requestor documentation of receipt and transmittal of faxes. The contractor shall establish and maintain a log of faxes sent and received, and shall deliver faxes twice daily. Urgent faxes are to be transmitted immediately upon receipt.

3.2.7 Forms Management Support. The contractor shall support the electronic design of FETC forms, and the orderly storage, inventory, ordering, and distribution of forms (both local and departmental) used by FETC personnel. The following services shall be provided by the contractor at the MGN and PGH facilities:

- a. establishing an orderly numeric storage system for each of the various groups of forms used at FETC including, but not limited to: FETC, DOE, standard, optional, and other agency forms, and other miscellaneous items, such as, envelopes, letterhead, memorandum, and conference notepads;
- b. filling all requests for stockroom forms and controlled departmental forms;
- c. maintaining a stock record of all forms and miscellaneous items ordered and used by FETC personnel, with the exception of the electronic local forms, which should be made available within a binder with the most up-to-date revisions;
- d. maintaining a complete electronic inventory of all stock (FETC and departmental forms stock, and other miscellaneous items);
- e. replenishing and ordering stock (which may include providing appropriate backup materials, such as, negatives, camera copy, and samples) of DOE, standard, optional, and other agency forms, envelopes, letterhead, FETC multiple-set forms and other miscellaneous items ordered from the Government Printing Office (GPO), as necessary, in order that an adequate supply is available for FETC personnel;
- f. designing/redesigning local FETC forms in standard format, as requested by the FETC Forms Manager, and maintaining a current electronic inventory on the Local Area Network (LAN). The contractor shall send final revisions to the LAN after approval by the FETC Forms Manager. The contractor shall notify office managers via e-mail when final revisions are available for electronic LAN retrieval; and
- g. maintaining an orderly central file copy of all DOE/FETC Directives and Regulations and the timely disbursing of copies of those documents in accordance with FETC requirements.

Deliverables. The contractor shall establish and maintain a log of all current electronic forms. The contractor shall also establish and maintain a record of all current hard-copy forms.

3.2.8 Copy Center and Duplicating Machine Maintenance Support. The contractor shall be responsible for the following requirements at the PGH site:

- a. providing a FETC copy center primarily devoted to large runs of printed material;
- b. providing high-quality reproduction services on a demand basis, which include the binding of documents;
- c. assisting in ordering and maintaining supply levels sufficient to provide uninterrupted reproduction

service;

- d. operating and maintaining (includes minor repair work) all reproduction equipment in the copy center (high-speed copiers, binding equipment, stapling and hole punch equipment);
- e. establishing and maintaining a usage record system of copy center services;
- f. providing management services for duplicating machines which include the convenience copiers;
- g. providing acquisition recommendations, management of copier subcontracts (which may be required), maintenance, and monitoring of the equipment necessary to fulfill the facility's duplicating service requirements;
- h. providing assistance to users of self-serve copy machines, key operator maintenance of self-serve copiers, and troubleshooting of self-serve machines. The equipment maintenance and repair service shall include but not be limited to the following specific areas: copy quality maintenance, parts replacement, emergency repairs, and preventive maintenance; and
- i. designating a primary and alternate individual as a point of contact (POC) for all service requests relating to the equipment. All service calls for equipment repairs shall be placed by the POC to ensure consistent and concise information regarding the required repairs of equipment. The POC shall coordinate a quarterly review of all equipment and service logs to assess the applicability and performance of each machine in relation to the area the machine supports. Any repairs requiring professional services shall be reported to and approved by the COR.

Deliverables. The contractor shall establish and maintain a usage record system of copy center services. The contractor shall deliver completed duplicating jobs to the requestors upon completion. The contractor shall establish and maintain a service log of all service calls for each duplicating machine.

3.2.9 Records Management Support. The contractor shall provide records management and storage support functions for the MGN and PGH facilities to include, but not be limited to, the following:

- a. maintaining control of inactive records boxes in the Records Holding Area, and any other storage location used for records holding. All records boxes must be screened to verify that content inventory corresponds to the Records Disposition Schedule, and boxes are numbered appropriately. Records boxes' descriptive information must be entered into the inventory database and records disposed of when General Records Schedule/DOE schedules criteria have been met. The contractor shall be available to provide access for individuals to retrieve material from stored boxes and to admit and monitor the Rights & Interests Records Custodial to update files, as necessary;
- b. performing an annual inventory, or more frequently if required by the FETC Records Officer, of all records boxes and providing disposition reports for the Records Officer to submit to all FETC organizations having boxes eligible for destruction. The contractor shall remove boxes from shelves and make all arrangements for appropriate disposal when scheduled criteria have been met or, when applicable, move boxes to another storage location. The contractor shall shred records with a designated Government representative present. The contractor shall prepare shipments to the Philadelphia Federal Records Center (FRC), or other designated FRCs, of all long-term inactive scheduled records; the contractor shall also prepare shipments of 30-year-old records and/or permanent records to the National Archives; and the contractor shall maintain a listing of records boxes shipments and retrieved boxes from the Philadelphia FRC and NARA, or other records storage locations, as necessary;
- c. assisting the Records Officer in preparation of annual records training for custodians and duplicate any new records information for dissemination to all Records Custodians, as directed by the Records Officer;
- d. ensuring all electronic, audiovisual, and micrographic records are appropriately scheduled and

preserved with inventories, required reports, and disposition authorities as these programs are initialized and ongoing;

- e. performing other records management-related services, functions, and operations as designated by the FETC Records Officer; and
- f. updating vital records in the Off-Site Emergency Records Center as necessary.

The contractor shall provide the following records management services with respect to environment, safety, and health records by:

- g. developing and maintaining a comprehensive filing system that merges both the DOE and contractor(s) ES&H files. This system shall ensure security of sensitive information and also ensure that privacy act provisions are met with respect to personnel medical files. A disposition schedule shall be developed and followed for sensitive and non-sensitive files. The contractor shall work closely with the ES&H Division to ensure that all DOE requirements are being met in the development of this comprehensive filing system.

The contractor shall also provide the following support to ensure that emergency response accountability lists are created and maintained by:

- h. creating an accountability list from the FETC phone card database. The list shall be used for building evacuations to ensure that each employee is accounted for in an emergency. Employees will be listed by location, alphabetically within each zone. The contractor shall ensure that personnel with offices at both MGN and PGH shall have dual accountability listings. This list shall be kept current at all times and shall be distributed to the fire warden POC in MGN and the emergency preparedness POC in PGH after each update.

Deliverables. Deliverables for general record management activities shall be made on an "as- requested" basis, except the performance indicator report which shall be delivered quarterly. A current accountability list shall be sent to the fire warden, EP support person, and COR after each update.

3.2.10 Package Express Delivery Support. The contractor shall provide package express delivery support services, including occupying an on-site office at which FETC employees and the FETC's mail service shall deliver packages for processing. Supplies specific to the package express delivery service shall be provided for that service via the FETC. The contractor shall perform the following services with respect to package express delivery:

- a. providing labor required to support the Package Express Delivery Service operations at FETC;
- b. receiving packages and letters designated for Package Express Delivery Service;
- c. completing the automated entry of addresses which will generate appropriate labels and entering the article into the Package Express Delivery Service's tracking system;
- d. assembling packages in appropriate shipping containers and affixing proper labels;
- e. transferring packages to the Package Express Delivery Service's courier on a daily basis (usually p.m. pick-up);
- f. forwarding invoices generated through the daily closeout process to the FETC Accounts Payable;
- g. responding to the FETC inquiries as to the tracking and verification of items sent; and
- h. preparing a daily closeout via the computerized system which shall consist of the following: creating an invoice for payment to the Package Express Delivery Service; preparing shipper's verification report, and preparing Package Express Delivery Service verification report.

Variable Work. Upon request, the contractor shall arrange for and provide after-hours (e.g., after 7:00 PM) pick-up service for express delivery packages received as well as transport service to express package receipt centers.

Deliverables. The contractor shall maintain a log of all Package Express Delivery mail. The contractor shall provide Package Express Delivery mail usage information, monthly reports and other information required by the COR.

3.3 Communication (Visual and Written) Services

The contractor shall provide graphics support, photographic support, multi-media support, technical writing support, and support to the FETC library.

3.3.1 Graphics Support. The contractor shall provide the personnel, expertise, and materials required to establish and maintain a media and publishing services center for creating, merging, modifying, enhancing, converting, storing, retrieving, and publishing documents and periodicals for FETC. Work to be performed shall include:

- a. providing electronic scanning/imaging services;
- b. converting electronic files to Adobe Acrobat PDF and PDF linking;
- c. operating IBM compatible and Mac OS personal computers, optical scanners, communications devices, laser printers, color plotters and other equipment that might be acquired to make this function less dependent on external graphics services;
- d. providing publications and presentation graphics support such as: infographics - charts, graphs, diagrams; presentation graphics - slides, view graphs, posters; illustrations and drawings - technical and illustrative; publication design and production - newsletters, brochures, pamphlets, factsheets, magazines, reports; conference materials - announcements, programs, support materials; multimedia presentations; signs/posters; OCR image scanning, and file translation.

Variable Work. The contractor shall provide slide development and reproduction and offset printing services to FETC, as necessary. Portions of these services may be handled through off-site vendors.

Deliverables. Monthly status reports shall be provided by the contractor.

3.3.2 Photography Support. The contractor shall provide comprehensive photographic services in support of the FETC's activities. Services shall include:

- a. studio, location, and aerial photography;
- b. digital photography and imaging;
- c. development and processing of color, black and white negatives, or slide film;
- d. printing of color, black and white photographic prints, and view graphs;
- e. image scanning for digital processing; and
- f. maintaining negative files and electric photo archives to provide easy access to existing photographs.

Variable Work. The contractor shall provide external processing of photographs, slides, etc., on an as-needed basis.

3.3.3 Multi-media Support. The contractor shall provide multi-media support services for kiosk presentations, informational videos, and CD-ROM production. Specific functions shall include, but not be

limited to, the following:

- a. providing development support services such as: artistic design (including illustrations) development; hardware and software integration, development, and troubleshooting; video, audio, and graphics services; multi-media scripting/story boarding; photography, graphics, video, video editing, animation, and audio integration;
- b. providing production support services such as: designing CD cover materials, designing and installing shields, burning CDs, and procuring CD production services;
- c. producing FETC conference proceedings on CD-ROM;
- d. producing multi-media products to include general FETC information, virtual site tours, DOE product line overviews, interactive exhibits, and other outreach products as required;
- e. assisting in the FETC procurement of multi-media equipment; and
- f. providing Internet and Intranet support in the design of web pages, web page postings, interactive Web events, and other information technology efforts.

Deliverables. A monthly activities report shall be provided to the COR. Electronic media shall be developed as requested.

Variable Work. The contractor shall be required to procure specialized multi-media services from an outside source on an as-requested basis.

3.3.4 Technical Writing Support. The contractor shall provide technical writing, editing, and proofreading services to the FETC. These services shall include:

- a. writing, technical editing, and proofreading of publications, reports, presentations, speeches, and media releases;
- b. physically preparing studies, assessments, topical reports, and technical papers;
- c. publishing and disseminating DOE reports, journals, manuals and program newsletters;
- d. answering information requests;
- e. storing publications and literature within guidance provided by DOE;
- f. interacting with appropriate external organizations to distribute FETC reports and other information for public distribution and access;
- g. generating, editing, and proofreading technical newsletters, reports, articles, and magazines including research and collection, assembly of background information, and interviewing of contributors; and
- h. producing brochures, pamphlets, announcements, fact sheets, and other publications, (including editorial research, interviewing, writing, editing, proofreading, graphics, layout/format/style, photography, word processing, typesetting, and printing services).

3.3.5 Library Support. The contractor shall assist in establishing and maintaining a FETC Technical Library (main technical library in MGN; satellite location in PGH). This library shall include, but not be limited to the following:

- a. assisting FETC in referencing material regarding lead mission areas, as well as allied fields;

- b. cataloging, tagging, controlling, and assisting in the purchase of books, journals, periodicals, and magazines;
- c. performing literature searches, patent searches, and continuing library automation activities; and
- d. maintaining a comprehensive repository of (1) all FETC Cooperative Research and Development Agreement (CRADA) final reports and summaries, (2) all technical papers published by FETC employees, and (3) all patents issued to FETC employees, as well as any associated patent licenses.

CONTRACT REPORTING REQUIREMENTS CHECKLIST

Contract Title: Site Operations and Program Support Services for the Federal Energy Technology Center

Contract No: DE-AM26-99FT40464

REPORT/PLAN	FORM NO.	REPORT FREQ.	NO. OF COPIES
A. GENERAL MANAGEMENT: <i>Evaluation Period Self-Ass</i>			
<input checked="" type="checkbox"/> Technical Planning Report	None	Y	*
<input checked="" type="checkbox"/> Cost and Manpower Planning Report	None	Y	*
<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:			
* 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.			
** Plan is to be updated annually.			
*** See the following Description of Reports for details related to the eight property reports that are due.			
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

TECHNICAL PLANNING REPORT

In response to FETC's Task Assignments, the contractor is to annually submit a Technical Planning Report. This report is to describe, from a technical perspective, the contractor's approach to implementation of the tasks and subtasks that FETC has requested the contractor to perform over the next one-year period. This report is to present detailed information at the subtask, task, and composite levels.

COST AND MANPOWER PLANNING REPORT

In response to FETC's Task Assignments, the contractor is to submit a Cost and Manpower Planning Report. This report is to describe, from a cost and manpower perspective, the contractor's approach to implementation of the tasks and subtasks that FETC has requested the contractor to perform over the next one-year period. This report is to present detailed information at the subtask, task, and composite levels.

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.

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 annually, within thirty days after the completion of each year of contract performance. 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 functions (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) relevant past and current experiences with ISM implementation, if experience exists. 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