

2. CONTRACT (Proc. Inst. Ident.) NO. DE-FE0004006	3. EFFECTIVE DATE See Block 20C	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 10FE011822
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5. ISSUED BY	CODE	02605	6. ADMINISTERED BY (If other than Item 5)	CODE	02605
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U.S. DOE/NETL  
Morgantown Campus  
3610 Collins Ferry Road  
PO Box 880  
Morgantown WV 26507-0880

U.S. DOE/NETL  
Morgantown Campus  
3610 Collins Ferry Road  
PO Box 880  
Morgantown WV 26507-0880

7. NAME AND ADDRESS OF CONTRACTOR (No., Street, City, Country, State and ZIP Code)  
  
SMART DATA SOLUTIONS, LLC  
Attn: ORLANDO BULLOCK II  
8701 GEORGIA AVE STE 700  
SILVER SPRING MD 209103720

8. DELIVERY  
 FOB ORIGIN       OTHER (See below)

9. DISCOUNT FOR PROMPT PAYMENT  
  
NET 30

10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN

CODE 152225301      FACILITY CODE

11. SHIP TO/MARK FOR	CODE	02605	12. PAYMENT WILL BE MADE BY	CODE	00509
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U.S. DOE/NETL  
Morgantown Campus  
3610 Collins Ferry Road  
PO Box 880  
Morgantown WV 26507-0880

OR for NETL (Morgantown)  
U.S. Department of Energy  
Oak Ridge Financial Service Center  
P.O. Box 4787  
Oak Ridge TN 37831

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:  
 10 U.S.C. 2304 (c) ( )       41 U.S.C. 253 (c) ( )

14. ACCOUNTING AND APPROPRIATION DATA  
See Schedule

15A. ITEM NO	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
Continued					

15G. TOTAL AMOUNT OF CONTRACT      \$35,000,000.00

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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17.  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.  AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number DE-SOL-0000332 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 condition sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

19A. NAME AND TITLE OF SIGNER (Type or print)

20A. NAME OF CONTRACTING OFFICER  
Raymond R. Jarr

19B. NAME OF CONTRACTOR  
  
BY   
(Signature of person authorized to sign)

19C. DATE SIGNED  
9/29/2010

20B. UNITED STATES OF AMERICA  
  
BY Signature on File  
(Signature of the Contracting Officer)

20C. DATE SIGNED  
09/29/2010

**SUPPORT ADMINISTRATIVE SERVICES FOR THE NATIONAL ENERGY TECHNOLOGY  
LABORATORY**

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**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 SERVICES BEING ACQUIRED – SUPPORT ADMINISTRATIVE SERVICES**

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 of administrative support services for the U.S. Department of Energy's (DOE) National Energy Technology Laboratory (NETL). The support shall span all NETL sites, except where noted. The functions performed under this service contract will include administrative support to five main service areas: Acquisition & Assistance Division (AAD), Financial Management Division (FMD), Office Management (OM), Information Management, and Event Management.

**B.2 GUARANTEED MINIMUM CONTRACT VALUE - MAXIMUM AVAILABLE PERFORMANCE AWARD FEE**

(a) The guaranteed minimum contract value is as follows:

Base Period	[\$250,000]
First Option Period	[\$250,000]
Second Option Period	[\$125,000]

(b) The maximum available award fee is as follows:

Base Period	██████████
First Option Period	██████████
Second Option Period	██████████

Under cost-plus award fee task orders, all fee shall be at risk, there shall be no base fee.

**B.3 CEILING PRICE OF CONTRACT**

The ceiling price of this contract, inclusive of fixed and award fee is \$35,000,000.00 (this is not the Government estimate, it represents only the maximum ceiling value of the contract). All orders including cost-plus fixed-fee (CPFF), cost-plus award-fee (CPAF), and firm-fixed price (FFP) count against this ceiling.

**B.4 ESTIMATED LEVEL OF EFFORT**

The Contractor shall provide the following estimated total Direct Productive Labor Hours (DPLH):

PERIOD	DPLH
[ <b>Base Period (24 months)</b> ]	[240,000]
[ <b>Option Period 1 (24 months)</b> ]	[240,000]
[ <b>Option Period 2 (12 months)</b> ]	[120,000]

DPLH are defined as actual work hours exclusive of vacation, holiday, sick leave, and other absences. The DPLH indicated above are provided for estimating purposes. Changes in programmatic requirements may cause a substantial increase or decrease in the number of DPLH. The Contractor shall be required to provide all DPLH which may be needed to complete the task orders issued during the term of the contract. However, the Contractor shall not proceed beyond the estimated DPLH unless authorized to do so in a contract modification issued by the Contracting Officer.

Nothing in this clause shall be construed to constitute authorization for work not in accordance with the "Limitation of Cost", "Limitation of Funds", "Completion Dates", or "Term of Contract" clauses of the contract.

## **B.5 TYPES OF TASK ORDERS**

Task orders issued under this contract will be either cost-plus-fixed-fee, cost-plus-award-fee, or firm-fixed price task orders in accordance with the terms and conditions set forth in Section H of this contract. Task Orders issued under this contract will be performance-based. Each task order will describe performance requirements, performance standards, and the means of performance measurement.

### **(a) Cost-Plus-Award-Fee Task Orders**

Task orders may be issued to require the Contractor to complete a specific task (or tasks) for cost-plus an award fee. The maximum award fee shall be determined on an individual task basis. If a task will be issued on an award fee basis, the Contractor will be requested to propose the award fee amount as part of their task cost proposal submitted with the Task Management Plan. The amount of award fee for each task order is subject to negotiation. Maximum available award fee for all cost-plus-award-fee tasks issued shall not exceed the maximum available award fee listed in clause B.2. It is expected that the majority of tasks issued shall be of a cost-plus award fee type and subject to the clauses identified in this contract.

### **(b) Cost-Plus-Fixed-Fee Task Orders**

Task Orders may be issued to require the Contractor to complete a specific task (or tasks) for cost-plus a fixed fee. The fixed fee shall be determined on an individual task basis. If a task will be issued on a cost-plus-fixed-fee basis, the Contractor will be requested to propose the fee amount as part of their task cost proposal submitted with the Task Management Plan. The amount of fixed fee for each task order is subject to negotiation. This contract includes specific clauses that pertain only to cost-plus fixed fee task orders.

### **(c) 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 indicate the proposed DPLH and the labor categories utilized. Other Direct Costs (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. This contract includes specific clauses that pertain only to fixed price task orders.

## **B.6 OPTION TO EXTEND SERVICES**

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 in accordance with the pricing requirements of FAR 8.707. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six (6) months. The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) days of the end of the contract period. Primary application of this authority would occur if delays in awarding a successor contract at the scheduled completion of this award were apparent

## **B.7 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT. (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within the term of the contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

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

**B.8 DISTRIBUTION OF PERFORMANCE AWARD FEE**

The total amount of award fee available for cost-plus-award-fee tasks issued under this contract is assigned as follows:

<b>FEE PERIOD</b>	<b>EVALUATION BEGINNING DATE</b>	<b>EVALUATION ENDING DATE</b>	<b>PLANNED VALUE</b>	<b>AVAILABLE AWARD FEE</b>	<b>FEE EARNED</b>
1	07/08/2010	12/31/2010	*	*	*
2	01/01/2011	06/30/2011	*	*	*
3	07/01/2011	12/31/2011	*	*	*
4	01/01/2012	06/30/2012	*	*	*

\*The Planned Value and Available Award Fee shall be filled for each fee period based on awarded task orders for that period; the Fee Earned column shall be filled in based on the amount of fee earned for each evaluation period identified.

In the event the Government exercises an option period, the additional fee periods will be added to the table above. 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 Contracting Officer (CO).

**B.9 LIMITATION OF FUNDS -- COST PLUS AWARD FEE**

Pursuant to FAR 52.232-22, "Limitation of Funds," total funds in the amount of \$60,000 are obligated herewith and made available for payment of allowable costs and award fee to be incurred from the effective date of this contract through the period estimated to end \$60,000.

**B.10 ANNUAL INDIRECT RATE SUBMISSIONS**

(a) Introduction:

(1) Indirect billing, revised billing (as necessary), and final rate agreements must be established between a Contractor and the Department of Energy (DOE) for each of the Contractor's fiscal years for the life of the cost-reimbursement type contract. These indirect rate agreements allow a Contractor to recover indirect expenses incurred during a fiscal year for which final indirect rates have not been established.

(2) Indirect billing and revised indirect billing rate proposals must represent the Contractor's best estimate of the anticipated indirect expenses to be incurred and the estimated allocation base for the current fiscal year in accordance with their approved accounting system. Revised billing rates allow a Contractor or DOE to adjust the approved billing rates, based upon updated information, in order to prevent significant over or under billings. Revised billing rates, once established, are retroactive to the beginning of the fiscal year involved and require an adjustment voucher to be submitted by the Contractor reconciling all previous indirect billings which used the previously approved billing rates.

(3) A final indirect rate proposal represents the indirect rate expenses actually incurred during a fiscal year and the actual business base experienced. Once established they are retroactive to the beginning of the fiscal year involved and require an adjustment voucher to be submitted by the Contractor reconciling all previous indirect billings if the established final rates differ from the previously approved billing rates.

(4) FAR 42.703(a) stipulates that "A single agency [see FAR 42.705-1(a)] shall be responsible for establishing indirect cost rates for each business unit. These rates shall be binding upon all agencies and their contracting offices, unless otherwise specifically prohibited by statute." This single Government agency is referred to as the Cognizant Federal Agency (CFA). The CFA is normally the Federal agency which has the largest unliquidated contract dollar amount by fiscal year with a Contractor.

(5) The establishment of rates for the reimbursement of independent research and development/bid and proposal

costs shall be in accordance with the provisions of FAR 31.205-18, "Independent Research and Development and Bid and Proposal Costs," and both FAR Subpart 42.10 and DEAR 942.10, "Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs."

(6) Sections (b) and (c) or (d) of this clause define the requirements to be followed by the Contractor in establishing indirect rates for contracts when DOE is the CFA and when DOE is not the CFA. Specific instructions for submittal of indirect rate proposals to agencies other than DOE must be obtained from the agency involved.

(b) Requirements whether or not DOE is the CFA

(1) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable sections of FAR Part 30, "Cost Accounting Standards," FAR Part 31 and DEAR 931, "Contract Cost Principles and Procedures," in effect as of the date of this contract.

(2) Pending settlement of the final indirect expense rates for any period, the Contractor shall be reimbursed at billing rates approved by the CFA subject to acknowledgment by the DOE Indirect Rate Contracting Officer (IRCO). These billing rates are subject to appropriate adjustments when revised by mutual agreement or when the final indirect rates are settled, either by mutual agreement or unilateral determination by the CFA subject to acknowledgment by the DOE IRCO.

(3) The Contractor shall continue to use the latest DOE or CFA approved billing rate(s) which have been acknowledged by the DOE IRCO until those rates are superseded by establishment of final rates or more current billing rates. In those cases where current billing rates have not been established, the latest approved final rates shall be used for invoicing, unless it is determined by the DOE IRCO that use of said rates would not provide for an equitable recovery of indirect costs. In those instances the DOE IRCO will take whatever steps are necessary to establish rates that DOE considers to be reasonable for billing purposes.

(4) All indirect rate agreements and correspondence shall be submitted to:

U.S. Department of Energy  
National Energy Technology Laboratory  
626 Cochran Mill Road  
P.O. Box 10940  
Contracting Officer for Indirect Rate Cost Management  
Building 921-I07  
Pittsburgh, PA 15236-0940

(c) Requirements when DOE is the CFA

(1) No later than six months after the close of its fiscal year, the Contractor shall identify to the DOE IRCO all of its contracts with Federal agencies, either as a prime or as a subcontractor (any level), and provide the following information for those contracts:

Name of Federal Agency  
Contract Number  
Contract Value (total and by fiscal year)  
Period of Performance  
Type of Contract (CPFF, FFP, etc.)

(2) In accordance with the "Allowable Cost and Payment" clause (DEAR 952.216-7) the Contractor, as soon as possible but not later than six months after the close of its fiscal year, shall submit to the DOE IRCO, identified in paragraph (b)(4) of this clause, a proposal for final indirect rates based on the Contractor's actual costs for the period, together with all supporting data. The Contractor's failure to provide the required rate proposals in a timely manner may impact payment of vouchers and could ultimately result in suspension of payments for the indirect expense portion of the vouchers.

(3) The settlement of the final indirect rates and indirect costs shall be accomplished prior to the Contracting Officer's approval of the final payment.

(4) Pending settlement of the final indirect expense rates for any period, the Contractor shall be reimbursed at billing rates approved by the DOE IRCO. These billing rates are subject to appropriate adjustments when revised by mutual agreement or when the final indirect rates are settled, either by mutual agreement or unilateral determination by the cognizant DOE IRCO (see FAR 42.704).

(5) The Contractor shall provide to the DOE IRCO annually, no later than 30 days after the close of its fiscal year, a billing rate proposal for the ensuing fiscal year, with supporting data. Failure to provide the required rate proposals in a timely fashion may impact payment of vouchers and could ultimately result in suspension of the indirect expense portion of vouchers.

(6) If the projected indirect expenses or bases change substantially during any fiscal year, the Contractor shall notify the DOE IRCO in writing and request an adjustment to the indirect billing rates. Upon review of the revised billing rate proposal, the DOE IRCO may adjust the previously approved billing rates. Such adjustments will apply retroactively to all billings containing the previously approved rates for the fiscal year in question, and the Contractor shall make all appropriate adjustments on its next voucher.

(d) Requirements when DOE is not the CFA

(1) When another Federal Agency or a different DOE Office has the CFA responsibility for the establishment of indirect rates with the Contractor, the Contractor shall provide a copy of the rate proposals, including all supporting documentation, submitted to the CFA. These submittals to DOE shall be within the time periods established within paragraphs (c)(2) and (c)(5) of this clause unless a written request for an extension is submitted by the Contractor and granted by DOE. Failure to provide the required rate proposals in a timely manner may impact payment of vouchers and could ultimately result in suspension of payments for the indirect expense portion of vouchers.

(2) The Contractor shall provide copies of all rates established by that CFA and any correspondence related to indirect rates to the DOE IRCO. It is imperative that the DOE IRCO be provided signed copies of all rate agreements established by the CFA since these agreements must be in the possession of, reviewed, and acknowledged by the DOE IRCO before any rates contained therein can be used by the Contractor for cost reimbursement.

(3) The Contractor shall identify, if known, the CFA responsible for the establishment of indirect rates, factors, and Facilities Capital Cost of Money Rates.

## **SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

### **C.1 STATEMENT OF WORK**

The Statement of Work is located in Part III -- Section J, Attachment A-2 to this contract. To assist with an understanding of NETL, an introduction has been included and is located in Part III – Section J, Attachment A-1.

### **C.2 REPORTS**

Reports shall be prepared and submitted in accordance with the reporting requirements described in Part III -- Section J, Attachment B. Additional program and project level reports and deliverables may also be identified in the task orders issued.

## **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).

Except for those reports required by the Reporting Requirements Checklist of the contract, which are coded by "A" (as required) where the urgency of receipt of the report by the Government necessitates the use of the most expeditious method of delivery, reports deliverable under this contract shall be mailed by other than first-class mail, unless the urgency of the deliverable sufficiently justifies the use of first-class mail. The Contractor shall not utilize certified or registered mail or private parcel delivery service for the distribution of reports under this contract without the advance approval of the Contracting Officer except for those reports coded "A."

### **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) Identifies the deliverable item number or Report Requirement which requires the delivered item(s).
- (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

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

## SECTION E - INSPECTION AND ACCEPTANCE

### E.1 INSPECTION

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

### E.2 ACCEPTANCE

Final acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer.

### THE FOLLOWING CLAUSE PERTAINS ONLY TO COST-REIMBURSABLE TASK ORDERS ISSUED AGAINST THIS CONTRACT.

### E.3 52.246-5 INSPECTION OF SERVICES - COST-REIMBURSEMENT. (APR 1984)

(a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may -

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may -

(1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or

(2) Terminate the contract for default.

**THE FOLLOWING CLAUSE PERTAINS ONLY TO FIXED-PRICED TASK ORDERS ISSUED AGAINST THIS CONTRACT.**

**E.4 52.246-4 INSPECTION OF SERVICES - FIXED-PRICE. (AUG 1996)**

(a) *Definition:* "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may

-

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may -

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or

(2) Terminate the contract for default.

## SECTION F - DELIVERIES OR PERFORMANCE

### **F.1 PERIOD OF PERFORMANCE (BASE CONTRACT WITH OPTION(S))**

#### BASE CONTRACT

The work to be performed under the Base Contract (Reference Part I, Section, B) shall commence on the effective date of the contract and shall continue for **twenty-four (24) months**. NOTE: The Government may elect not to exercise the option.

#### OPTION I

If Option I is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of **twenty-four (24) months** from the 25<sup>th</sup> month through the 48<sup>th</sup> month.

#### OPTION II

If Option II is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of **twelve (12) months** from the 49<sup>th</sup> month through the 60<sup>th</sup> month.

### **F.2 PRINCIPAL PLACE OF PERFORMANCE**

The principal place of performance under this contract shall be at the National Energy Technology Laboratory various locations. NETL is a geographically dispersed organization, with locations in Morgantown, West Virginia; Pittsburgh, Pennsylvania; Albany, Oregon; Houston, Texas; Fairbanks, Alaska. NETL also includes various regional offices, therefore the Contractor may be required to travel between, and provide services to various other NETL or DOE locations in the United States.

### **F.3 52.242-15 STOP-WORK ORDER. (AUG 1989)**

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

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the 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 or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule 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 the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

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

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

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

*Alternate I (Apr 1984).* Applies for all cost-reimbursement Task Orders issued under this award.

Substitute in paragraph (a)(2) the words “the Termination clause of this contract” for the words “the Default, or the Termination for Convenience of the Government clause of this contract.” In paragraph (b) substitute the words “an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected” for the words “an equitable adjustment in the delivery schedule or contract price, or both.”

## **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) Indirect Rate Correspondence

All correspondence relating to the establishment, revision, and negotiation of billing and final indirect cost rates shall be addressed to the Contracting Officer for Indirect Cost Rate Management, with information copies of the correspondence to the DOE Contract Specialist.

(d) Correspondence on Patent or Technical Data Issues

Subject inventions shall be reported to the Office of Intellectual Property Law;- U.S. Department of Energy; Chicago Operations Office; 9800 South Cass Avenue, Building 201, Argonne, IL 60439.

All other correspondence concerning patent or technical data issues shall be addressed to the NETL Patent Attorney, the DOE Contract Specialist, and the Contracting Officer's Representative.

(e) 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.

(f) Subject Line(s)

All correspondence shall contain a subject line commencing with the contract number, i.e., TBD, 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 F4220.50 (Statement of Cost). Electronic versions of the SF1034 and the F4220.50 can be found on the NETL website at <http://www.netl.doe.gov/business/forms.html>. The Statement of Cost shall be supported by the information contained in Paragraph (c) of this clause. 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 service.
- (4) Description, price and quantity of property and services actually delivered or rendered
- (5) Shipping and payment terms.
- (6) Name (where practicable), title, phone number and complete mailing address of responsible official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (7) Name (where practicable), title, phone number and complete mailing address of the person to be notified in the event of a defective invoice.
- (8) Other substantiating documentation or information as required by the contract.

(b) Statement of Cost

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

(c) Supporting Documentation

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

Indirect rates used for billings must be clearly indicated, as well as their basis of application. When the cognizant Contracting Officer (CO) or auditor approves a change in the billing rates, include a copy of the approval.

The invoice, cost management report, invoice detail report, and staffing report summary are to be prepared and submitted at the same time so that all include the same information and are supportive of each other.

The Contractor shall include a cumulative roll up of the cost-incurred-to-date which shall include separate lines for costs incurred, fixed priced task, fixed fee, award fee, and DPLH as indicated below:

	Current Period	Cumulative Amount
Cost Incurred (cost task orders)	TBD	TBD
Fixed Price (FFP task orders)	TBD	TBD
Fixed Fee	TBD	TBD
Award Fee	TBD	TBD
DPLH	TBD	TBD

(d) Submission of Voucher

Submit the original voucher including the supporting documentation to the following payment office. This submission may be done electronically through the Vendor Inquiry Payment Electronic Reporting System (VIPERS) available to Contractors at the following website: <http://finweb.oro.doe.gov/vipers.htm> . Contractors must have a Federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system. VIPERS:

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

In addition, submit one hard copy to the Contract Specialist and one hard copy to the COR of the voucher including the supporting documentation to the following address:

U. S. Department of Energy  
National Energy Technology Laboratory  
3610 Collins Ferry Road, P.O. Box 880  
Morgantown, WV 26507-0880

(e) Billing Period

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

(f) Payment Method

In accordance with the clause entitled "Payment by Electronic Funds Transfer - Central Contractor Registration", payment under this contract will be made utilizing the Automated Clearing House (ACH) network. The payment system is specifically referred to as "Vendor Express."

(g) Defective Invoices

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

(h) Status of Payments

The Oak Ridge Financial Service Center (ORFSC) has a system via the Internet, in which Contractors can request information about payments by invoice, by contract number, and/or by paid date. The system is called Vendor Inquiry Payment Electronic Reporting System (VIPERS) and is available to Contractors at the following website: <https://finweb.oro.doe.gov/vipers.htm> . Contractors must have a Federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system.

**G.3 PAYMENT OF PERFORMANCE AWARD FEE**

The Government will promptly make payment of any award fee earned 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. The Contractor shall submit a separate invoice (*i.e., apart from regular monthly invoice*) based on the FDO's fee notice to the Government for payment.

**G.4 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR**

A support service Contractor performs the function of processing all invoices submitted to the National Energy Technology Laboratory, against its awards. Therefore, this Contractor has access to your business confidential cost/rate information. A special provision in this Contractor's award requires the confidential treatment by all Contractor employees of any and all business confidential information of other Contractors and financial assistance recipients to which they have access.

**G.5 ACCOUNTABILITY OF COSTS/SEGREGATION OF TASK ORDERS**

All costs incurred by the Contractor under this contract shall be segregated by each task order. The Contractor shall, therefore, establish separate "Job Order Accounts and Numbers" for each task order issued and shall record all incurred costs in the appropriate job order account assigned each task order.

There shall be no co-mingling of costs between task orders.

**THE FOLLOWING CLAUSE PERTAINS ONLY TO COST PLUS FIXED FEE TASK ORDERS ISSUED AGAINST THIS CONTRACT.**

**G.6 PAYMENT OF FIXED FEE (LEVEL-OF-EFFORT TASK ORDERS)**

The fixed fee specified in the task order clause entitled, "Estimated Cost and Fixed Fee" shall be paid to the Contractor on the basis of the number of Direct Productive Labor Hours (DPLH) delivered relative to the number of DPLH set forth in the clause entitled, "Estimated Level of Effort", Section B, clause B.4.

The amount of fixed fee earned and payable under the contract, prior to final payment, shall be the amount derived by dividing the total number of DPLH delivered to date under the contract by the total number of DPLH to be delivered under the contract, and multiplying the result by the total fixed fee set forth in the clause; provided, however, that this amount does not exceed 85 percent of the fixed fee specified in the task order clause entitled "Estimated Cost and Fixed Fee" (See FAR 52.216-8 Fixed Fee).

The total amount of fixed fee earned under this contract upon its expiration shall be 100 percent of the fixed fee set forth in the task order clause entitled "Estimated Cost and Fixed Fee"; provided, however, that the number of DPLH delivered under the contract equals or exceeds 90 percent of the total DPLH to be delivered under the contract (See the clause entitled "Estimated Level of Effort").

## **SECTION H - SPECIAL CONTRACT REQUIREMENTS**

### **H.1 CONSECUTIVE NUMBERING**

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

### **H.2 TECHNICAL DIRECTION**

- (a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR). 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, required 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 estimated contract cost, the fixed fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within the 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 - Alternate I".

### **H.3 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.4 GOVERNMENT PROPERTY**

- (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 replacement items for those items on the "Government Property List" and only as directed by the CO or their designee.
  - (2) The Contractor shall be required to ensure that Contractor Acquired Property is entered into the Property Administration Management System (PAMS) and indicates the Purchase Order number utilized to acquire the property. The Contractor shall also enter into PAMS any changes to the Government Property.
  - (3) The Contractor may request authorization for acquisition of additional items (not already on the list) 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.
  - (4) Any changes in the acquisition authorization shall be reflected in a revision of the "Government Property List".
  - (5) Authorization to acquire does not constitute consent to the placement of a subcontract.
- (c) Government Property
  - (1) Except as otherwise authorized by the Contracting Officer in writing, only that property specifically included in the "Government Property List" shall be furnished.
  - (2) The current "Government Property List" is located on the Internet at <http://www.netl.doe.gov/business/solicitations/ssc2008/index.html> and will be available for Contractor access at this site during the solicitation phase of this contract.
  - (3) The "Government Property List" is considered a living document and is maintained through the Property Administration Management System (PAMS). The Contractor will designate an authorized representative who will have limited access to the PAMS for the purpose of updating the property list and acquiring property reports. The most current "Government Property List" can be obtained through the report capability in the PAMS as property assigned to this contract.

- (4) Annually, unless a different schedule is approved by the Contracting Officer, the Contractor shall complete a physical inventory of property furnished. The inventory will be reconciled with the Government and adjustments, if necessary, will be made to the PAMS.
  - (5) The "Government Property List" as maintained in the PAMS is incorporated into this contract by reference in its entirety. No hard copy of the Government Property List will be attached to this contract.
  - (6) Administration of the Government Property and the PAMS will be the responsibility of the Organizational Property Management Officer and/or the Government Property Administrator.
- (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.5 USE OF GOVERNMENT-OWNED FACILITIES**

The Contractor is authorized to use on a no-charge, non-interference, basis in the performance of this contract, the Government-owned facilities indicated below.

NETL has office spaces at the Pittsburgh, Morgantown, Albany, and Houston sites available for use by on-site Contractor personnel in the performance of this contract; the amount of office space is subject to change. Other associated Government furnished items for the on-site personnel include: office furniture, local area network services, parking facilities, and other services as described in the clause entitled "Government Provided Services".

**H.6 MOVEMENT OF GOVERNMENT PROPERTY OFF-SITE -- NETL**

No Government-owned property, equipment, or materials will be removed from the National Energy Technology Laboratory without the completion of NETL Form 580.1-6, Property Pass and the prior written permission from the Contracting Officer or his/her designee and NETL's Property Administrator, excluding Government vehicles assigned to the Contractor.

**H.7 WORK BREAKDOWN STRUCTURE**

The Contractor's Work Breakdown Structure (WBS) shall require the written approval of the Contracting Officer's Representative (COR) prior to submission of the first invoice. The WBS submitted by the Contractor shall be in sufficient detail to track all incurred cost and labor hours to their lowest elements. For example, as a minimum, the WBS Structure and dictionary must be capable of breaking down labor cost, travel, materials, supplies, equipment, subcontracts, consultants, and other costs.

- A. WBS Structure Use – The Contractor shall use the WBS structure approved by the Administrative COR as the basis for all contractual reporting, invoicing, and accounting;
- B. Changes in WBS – On an annual basis the Contractor shall review their WBS Structure to ensure continued compliance with the work required. If a change is determined to be necessary, the Contractor shall submit a revised WBS for review and approval;
- C. Subcontract WBS – The Contractor shall include the requirements of this clause in all cost-reimbursement subcontracts it issues when:
  - (1) The value of the subcontract is greater than \$250,000, unless specifically waived by the Contracting Officer; or
  - (2) The Contracting Officer determines that the subcontractor effort is, or involves, a critical area related to the contract.
- D. Example:

WBS Level 1: Contract Level Reporting

WBS Level 2: Task Level Reporting

WBS Level 3: Subtask Level Reporting (if needed)

WBS Level 4: Activity Level Reporting (if needed)

Further levels as appropriate.

**H.8 KEY PERSONNEL/PROGRAM MANAGER**

The Key Personnel, which include 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 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>Title</u>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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.9 AWARD FEE DEDUCTION BASED ON FAILURE TO FULFILL COMMITMENT INDICATED BY TEAM MEMBER OR THAT OF KEY PERSONNEL**

In the event that a team member or Key Personnel fails to honor their commitment for the time period indicated in their commitment letter contained in the contractor's proposal, then the total award fee earned during the affected fee period(s) may be reduced by 10 percent, at the discretion of the Fee Determination Official, for each position and team member where the commitment was not honored. This deduction will be taken in addition to any other reduction noted for the performance of the contractor during the affected rating period.

**H.10 TRAVEL AND PER DIEM COSTS**

Costs incurred by Contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by Subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any revision of such subchapter; and are allowable pursuant to the "Allowable Cost and Payment" clause, FAR 52.216-7.

Foreign travel shall be subject to DEAR 952.247-70.

**H.11 ORDERING PROCEDURE**

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

The Contractor shall incur costs under this contract only in the performance of task orders and revisions to task orders issued in accordance with this ordering procedure. No other costs are authorized without the express written consent of the Contracting Officer (CO).

From time to time during the period of performance of this contract, task orders will be issued in writing by the Contracting Officer designating (1) the task to be performed; (2) the schedule of performance; (3) authorized travel; (4) any Government-furnished property (specific to the performance on the task order); and (5) any special instructions. Such task orders will specify deliverables and required delivery dates. Deliverables may consist of statements, charts, reports, briefing notes, tabulations, view graphs, and other forms of presentation as appropriate. If appropriate, based on 48 CFR 945, property which is Government-furnished or Contractor-acquired will also be listed in the Government-Furnished Property List of this contract as well as in the individual task orders (task orders will only identify specific property unique to performing the work under that particular task order and will not reiterate property associated with facilities/office functions or property utilized on multiple task orders. Those will be reported and monitored at the contract level).

Task orders will be issued on forms specified and provided by the Government. Task orders will be numbered. A modification to the task orders will be identified by an alpha designation following the existing task order number indicating the revision sequence. NETL utilizes an electronic site support task management system for the issuance of task orders and task order requests. The Contractor shall provide individuals designated to be users of the electronic system for the submission of task management plans.

The Contractor shall submit within ten (10) calendar days, after receipt of each Request for task order issued by the Contracting Officer, a one-time Contractor Task Management Plan. The task management plan includes a narrative task approach for accomplishing the task and the Contractor's overall cost estimate for the completion of the task order.

The task management plan shall include:

- a. Business Management Approach  
The Business Management Approach provides an overall summary of the important aspects of the effort and the methodology, resources and quality assurance/quality control(QA/QC) process that will be deployed to accomplish the work outlined in the task;
- b. Cost Plan  
The task cost plan shall propose cost against a work breakdown structure. This cost plan shall include the following detail to demonstrate all estimated costs at the lowest level of work breakdown structure have been identified:
  - i. Date of commencement of work, and any necessary revision to the schedule of performance.
  - ii. Estimated Cost and Directive 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;
  - iii. Travel, training, equipment, supplies, and materials estimate;
  - iv. Estimated subcontractors and consultants costs, including DPLH if applicable. (Subcontractor and consultant costs need to be provided at same level of detail as the prime)
  - v. Other pertinent information (*e.g., indirect costs, inter-divisional transfers*);
  - vi. Estimated computer time and cost, if applicable;
  - vii. The total estimated cost and the proposed maximum award fee or fixed fee for completion of the task order. For fixed-price task orders the Contractor shall provide a total firm fixed price.
- c. Milestone schedule

The Contractor's Task Management Plan is subject to the review of the Contracting Officer or designee. After a Task Order is issued, if the Contractor becomes aware that the estimated cost or DPLH differs from the Contractor's Task Management Plan by more than 10 percent (more than + or - 10 percent variance) then the Contractor shall promptly submit to the Contracting Officer or designee a revised Task Management Plan with explanatory notes.

This ordering procedure is of a lesser order of precedence than the "Limitation of Cost," "Limitation of Funds," "Completion Dates," "Term of Contract," or "Estimated Level of Effort" clauses of the contract. The Contractor is not authorized to incur costs on Task Orders which are not in compliance with any of those clauses of the contract.

#### **H.12 PRIOR APPROVAL REQUIREMENTS FOR PLACEMENT OF SUBCONTRACTS AND/OR CONSULTANTS**

The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract, including consultants, for which advance notification is required under FAR 52.244-2, "Subcontracts".

Any request for subcontract/consultant approval shall include the elements prescribed by FAR 52.244-2, including subcontractor/consultant Representations and Certifications. For consultants the Contractor will obtain and furnish information supporting 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 consultants to others for performing consulting services of a similar nature.

Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts and/or consultants 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.

The Contractor is hereby given consent to the placement of the following subcontracts, which were evaluated during negotiations:

Performance Management Corporation  
Strategic Management Corporation

Notwithstanding this consent, the Contractor shall ensure compliance with FAR 52.244-2. All subcontracts and/or consultants must contain all applicable flow-down clauses contained in Part II, Section I.

#### **H.13 SUBCONTRACTOR FACILITIES CAPITAL COST OF MONEY**

To the extent a subcontractor proposes to recover as an element of proposed cost any Facilities Capital Cost of Money (FCCOM) from a higher tier subcontractor or from the prime Contractor, the FCCOM cost principle (FAR 31.205-10) shall apply to subcontracts and new scope modifications issued thereto which are fee bearing cost reimbursement type or negotiated fixed price type.

To the extent a subcontractor is eligible to recover yet does not propose as an element or proposed cost any Facilities Capital Cost of Money (FCCOM) from a higher tier subcontractor or from the prime Contractor, the higher tier subcontractor or the prime Contractor shall insert the following provision in any such subcontract or new scope modification issued thereto:

Waiver of Facilities Capital Cost of Money (FAR 52.215-17, OCT 1997)

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

The Contractor agrees to insert the substance of this clause, including this paragraph (c) altered as necessary for proper identification of the parties, in any subcontract placed hereunder which is a fee bearing cost reimbursement or negotiated fixed price type.

#### **H.14 LIMITATION OF INDIRECT COST**

Notwithstanding any other clause(s) of this contract, the Government shall not reimburse the Contractor for any site specific on-site and G&A indirect costs in excess of the indirect expense dollars derived for each of the Contractor's

fiscal years by the application of the following individual indirect cost ceiling rates to the appropriate base outlined below. The indirect cost ceiling rates are based on a [REDACTED] All indirect costs in excess of said limit(s) shall be borne by the Contractor.

A) Percentage of Overall Rate

		Indirect Cost Ceiling Rate(s) per Contractor's Fiscal Year (1)				
Indirect Cost	Base of Application	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
NETL Site Specific On-Site Overhead	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
G&A	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(1) For Contractor's FY

The indirect cost limitations set forth above include provisions for all known increases that will take place during the term of this contract resulting from statute, court decisions and/or written ruling or regulation by the Internal Revenue Service (IRS) or any other taxing authority. However, in the event that during the term of this contract, any other statute, court decision and/or written ruling or regulation affects the Contractor's indirect costs, the indirect cost limitations will be adjusted to the extent the Contracting Officer determines the increase or decrease, if any, said statute, court decision and/or ruling or regulation impacts the Contractor's indirect costs.

This clause shall be flowed down to all subcontracts issued under a cost reimbursement basis.

**H.15 INDIRECT COSTS**

Pending establishment of final indirect cost rates for any period, billing and reimbursement of indirect costs shall be made on the basis of provisional rates recommended by the cognizant Government auditor. When a rate change occurs, and after it has been audited and approved by the cognizant Government auditor, the Contractor shall inform the Contracting Officer by letter of the indirect rate change. This notification shall include a copy of the cognizant auditor's approval and the cost impact of the rate change on the program.

**H.16 PERFORMANCE EVALUATION PLAN (PEP)**

The Contractor's performance will be evaluated at the task level in accordance with the Performance Evaluation Plan included in Part III, Section J, Attachment C. The plan includes the criteria to be considered under each area evaluated and the percentage of award fee available for each area. The plan may be revised unilaterally by the Government with notification of the change(s) provided to the Contractor at least fifteen (15) calendar days prior to the start of the evaluation period to which the change will apply. The plan may be revised bilaterally anytime throughout performance of the contract.

**H.17 PERFORMANCE BASED AWARD FEE**

(a) AWARD FEE DETERMINATION

- (i) The Government shall, at the conclusion of each evaluation period, evaluate the Contractor's performance for a determination of performance based award fee earned. The Government will validate, by appropriate means, the information in the Contractor's self evaluation.
- (ii) The Contractor agrees that the determination of performance based award fee earned will be made solely by the Government Fee Determining Official (FDO) and such determination is binding on both parties.
- (iii) The evaluation of the Contractor's performance shall be in accordance with the Government's

Performance Evaluation Plan (PEP) as indicated in Clause entitled "Performance Evaluation Plan (JUNE 2003)" set forth in Part I Section H. The Contractor shall be promptly advised in writing of the FDO's determination and the reasons why the performance fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government in accordance with the (PEP), the FDO may also consider any information available to him or her which relates to the Contractor's performance of contract and order requirements, regardless of whether or not those requirements are specifically identified in the PEP. To the extent the Contractor does not perform those requirements, the FDO may reduce the fee determination. In the event that the Contractor's performance is considered unacceptable in any area of performance which is specified in the PEP, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her sole discretion determine the Contractor's overall performance to be unacceptable, and accordingly may withhold the entire performance fee for the evaluation period.

(By way of example, in the ES&H area, the FDO may withhold the entire performance fee for the evaluation period in which the Contractor's negligent or poor performance results in: (1) creation of a dangerous work environment; (2) liability, or risk thereof, to the Government; (3) death or injury to one or more workers; or; (4) notice(s) of violations being issued by regulatory agencies.)

- (iv) Any unearned award fee from each evaluation period shall not be eligible to be earned in any future period(s).

(b) **CALCULATION OF AVAILABLE AWARD FEE**

The maximum available fee pool will be established for each Task under this contract and is set forth in Part I Section B. The pool is expressed as a discreet dollar amount, not as a percentage of the plan.

(c) **REVIEW AND ADJUSTMENT OF AVAILABLE AWARD FEE**

A meeting with the COR, CO, and Contractor will be held immediately following release of the Cost Management Report (CMR) for the fourth month of the evaluation period to review, on a task basis, any significant variances between planned DPLH and actual DPLH incurred. The COR and the Contractor will provide the CO with information concerning the variance(s) such that a determination may be made as to whether an adjustment in the fee pool for a particular task is appropriate. Variances between planned and actual DPLH in performance are assumed to fall into one of the following three categories:

- (i) Actuals are less than planned due to Contractor management practices and cost saving efforts. No adjustment to the fee pool would be made in this case. Cost overruns attributable to the Contractor will not increase the available fee pool.
- (ii) The work schedule, for whatever reason, has slipped, causing the work and its associated DPLH to move to a future performance period. In this case, the Contracting Officer shall make an equitable adjustment to the fee pool warranted by the circumstances.
- (iii) Actuals may underrun/overrun plan due to modifications to task plans. In this case, the Contracting Officer shall make an equitable adjustment to the fee pool warranted by the circumstances.

The Contracting Officer shall make a determination on acceptable adjustments to the available fee pool and those adjustments shall be documented in a contract modification prior to the closing of the evaluation period.

**H.18 CONFIDENTIALITY OF INFORMATION**

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:

- (a) Information which, at the time of receipt by the Contractor, is in the public domain;
- (b) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- (c) 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;
- (d) 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.

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.

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.

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.

This clause shall flow down to all subcontracts.

#### **H.19 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.20 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 Officers 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.21 INSURANCE -- MINIMUM REQUIREMENTS**

In accordance with FAR 52.228-7 (Section I), the Contractor shall provide insurance in the minimum amounts as set forth below. The required amount of insurance to be carried by the Contractor under this section may be changed upon the Government's written notice to the Contractor.

- (a) Worker's Compensation and Employer's Liability.

Contractors are required to comply with applicable Federal and State workers' compensation and

occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. The Contractor shall obtain employer's liability coverage of at least \$100,000.

(b) General Liability.

The Contractor shall obtain bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence and property damage liability insurance coverage of at least \$500,000 per occurrence.

(c) Automobile Liability.

The Contractor shall obtain automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles, including Government furnished vehicles, used in connection with performing the contract. The Contractor shall obtain coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$50,000 per occurrence for property damage, including any property damage to Government furnished vehicles.

**H.22 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" located in Part III, Section J, Attachment D to this contract, except as the Contracting Officer may authorize.

**H.23 COMMUNITY COMMITMENT**

It is the policy of NETL to be a constructive partner in the geographic region in which NETL 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.

**H.24 AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE) USAGE**

ADPE requirements which were not included in the Contractor's original proposal may not be acquired (leased or purchased) without the prior written consent of the Contracting Officer. Whenever Contracting Officer written consent is required, the Contractor will furnish to the Contracting Officer information concerning the need for and selection of such ADPE, the specific make(s) and model(s), and the lease versus purchase determination.

**H.25 CONSERVATION OF UTILITIES**

The Contractor shall instruct Contractor employees in utilities conservation practices. The Contractor shall operate under conditions that preclude the waste of utilities.

The Contractor shall use lights only in areas where and at the time when work is actually being performed except in those areas essential for purpose of safety and security.

**H.26 GOVERNMENT PROVIDED SERVICES**

The Government shall provide the following on-site services. The Contractor shall use these services for official use only, in performance of the required services specified in this SOW.

- (a) Utilities: The Government shall provide electricity, water, lights, sewage, and heating or cooling.

- (b) Mail Distribution: The Government shall provide mail pick-up and delivery of official mail.
- (c) Postage: Government-provided postage is restricted to official correspondence.
- (d) Telephone: Telephones shall be provided for Contractor-personnel to make official local and long distance calls.
- (e) Custodial Service: The Government shall provide custodial services to include emptying of trash cans and vacuuming and shampooing of carpeted areas in Government-furnished facilities.
- (f) Refuse Collection: The Government shall provide refuse collection at Government-furnished facilities.
- (g) Insect and Rodent Control: The Government shall provide insect and rodent control in Government-furnished facilities. The Contractor shall notify the COR if the facilities appear to be infested.
- (h) Printing and Reproduction: Office copiers shall be provided according to Government policies for their use. The Contractor shall use NETL's Graphics and Printing facilities for the productions of documentation required in support of this SOW.
- (i) Equipment Maintenance: The Government shall maintain equipment whose maintenance is not obtained through this contract.
- (j) Security Police and Fire Protection: In case of emergency, the Contractor shall notify the Security Office immediately. The Contractor shall obtain these phone numbers from the COR and keep them posted and up to date at all times.
- (k) Transportation: NETL has a pool of General Services Administration (GSA) vehicles, to which the Contractor will have reasonable access for Official Government business in performance of services required by this Contract.
- (l) IT Services: The Government shall provide basic office automation tools to include an office computer connected to the NETL administrative network and loaded with an office software suite (presently MS Office); access to enterprise email and calendaring software (presently Novell GroupWise); access to enterprise applications as required; access to network file and print services; access to Internet services; office telephone and voice mail services; access to convenience copier and copy center services; access to library services; access to video teleconference and teleconference meeting resources as required; and access to helpdesk services.

## **H.27 SECURITY AND PERSONNEL REQUIREMENTS**

### **(a) GENERAL RESPONSIBILITIES**

The Contractor shall be responsible for complying with the provisions of NETL's unclassified security program. The Contractor shall cooperate with the Computer Security Program Manager (CPPM) and the Contracting Officer's Representative (COR) in all information security matters.

### **(b) CLASSIFIED MATERIAL**

NETL normally does not handle classified material so the Contractor shall abide by all provisions of the Department of Energy (DOE) Order 205.1 "Unclassified Computer Security Program" (incorporated by reference or as revised.). However, "on request" services provided by the Contractor off-site for other Government agencies may require access to classified materials and appropriate security clearances for contractor personnel performing the services.

### **(c) ACCESS TO FACILITIES**

The Contractor shall prohibit access to Government-furnished facilities of any persons other than authorized Government and Contractor employees, unless prior approval is obtained from the Contracting Officer (CO) or appropriate COR.

The Contractor shall maintain the security within the facility. Anyone entering the facility who does not have a valid NETL identity badge must be processed through NETL's Visitor Registration process at NETL's Security Office or main lobby and must obtain a visitor identification badge and be escorted by a NETL representative. All personnel who have not been issued a NETL identity badge shall be escorted.

(d) **PHYSICAL SECURITY**

The Contractor shall be responsible for safeguarding and securing all Government property provided for use under this contract. The Contractor shall notify the COR within 24 hours after discovery of any missing Government property.

(e) **KEY CONTROL**

The Contractor shall ensure there is adequate control of keys and access cards to preclude the loss, misplacement or unauthorized use and access to Government equipment and facilities. The Contractor shall not duplicate keys issued by the Government.

In the event the Contractor loses Government keys, the Government shall replace, or re-key, all keys or locks, as the Government deems necessary. The Government shall deduct the total cost for replacing locks and keys from the monthly payment due the Contractor. In the event a master key is lost or duplicated, the Government shall replace all locks and keys for that system and deduct the total cost for replacement from the monthly payment due to Contractor; or at the Government's discretion, the Government shall require the Contractor to replace locks and keys to the COR's satisfaction.

The Contractor shall report any occurrence of a lost or misplaced key to the COR within 4 hours of discovering that a key has been lost or misplaced. The Contractor shall provide a follow-up report, in writing, to the COR within 24 hours.

The Contractor shall prohibit the use of Government-issued keys by any persons other than the Contractor's authorized employees.

(f) **COMBINATION CONTROL**

The Contractor shall ensure there is control of combinations for cipher locks. The Contractor shall notify the COR within one workday after termination of employment of all Contractor employees who have access to the combination. The Contractor shall establish and implement methods to ensure that no lock combinations are revealed to unauthorized persons. The procedures shall be included in the Contractor's quality control program.

(g) **PERSONNEL AND SECURITY**

(1) **Building Access:** The Contractor shall require all contract employees' to complete the appropriate forms for computer and building access security.

(2) **Identification Badge:** The Contractor shall obtain an identification badge for each Contractor employee from NETL Security prior to entry on duty. Contractor employees shall display this identification badge at all times within NETL facilities. Contractor shall be responsible for returning badge of departing employee to Security.

(h) **DATA SECURITY**

All information, whether stored in the computer, in hard copy form, or on magnetic media, shall be protected from disclosure, and unauthorized modification or destruction at all times. Contractor personnel shall take all precautions to protect the information and programs and shall report all suspected violations to the COR or Cyber Security Program Manager (CSPM).

Information processed and stored by these Information Resource systems shall include some information that must be safeguarded from disclosure and alteration. That information is subject to protection by the Privacy Act of 1974 or The Freedom of Information Act (5 USC, Section 552). The Contractor agrees, in the performance of this contract, to keep sensitive information in the strictest of confidence and to take reasonable measures to protect it from unauthorized modification or destruction, said information being the sole property of the Government. The Contractor also agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form, and not to authorize or permit others to do so. The Contractor shall take such reasonable measures as are necessary to restrict access to this information, while in his possession, to those employees needing such information to perform the work provided herein (*e.g. on a "need to know" basis*). The Contractor shall immediately verbally notify, and notify in writing before the close of business of the next day, the Government COR or the CO or his authorized representative, in the event that the Contractor has or has reason to suspect a breach of data security occurred.

#### **H.28 CONTRACTOR COMMUNICATION RELEASES**

The DOE policy and procedure on news releases requires that all Contractor communication releases (*i.e., press releases, public statements*) be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) working days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned news releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

#### **H.29 ENVIRONMENTAL, SAFETY, AND HEALTH MANAGEMENT SYSTEM POLICY AND ENVIRONMENTAL ASPECT AND OBJECTIVE/TARGET CONSIDERATIONS**

The Contractor must be knowledgeable of NETL's environment, safety, and health management system policy, aspects, objectives and targets and consider how their work could affect or create additional aspects or objectives. The Contractor shall support NETL's ISO 14001 and OHSAS 18001 certifications by ensuring that his/her employees and work practices support the NETL ES&H policy, plans, procedures and the objectives and targets.

#### **H.30 ENVIRONMENTAL, 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, other NETL employees, and the public, and to prevent damage to the environment and NETL-owned materials, supplies, equipment, facilities, and any other NETL-owned property.

(b) The Contractor shall comply with the requirements of NETL's environment, safety, and health (ES&H) programs as implemented through NETL directives (orders, operating plans and procedures). These programs are based on conforming to the requirements listed on NETL's focused standards list (see attached example), which is a compendium of applicable Federal, state, and local regulations; consensus standards; and DOE directives. In particular, the Contractor shall comply with the procedural, recordkeeping, and reporting requirements of these ES&H programs and their supporting directives. Where conflict exists among the standards' requirements, the most protective shall be adopted, unless relief is provided by the Contracting Officer.

(c) The Contractor shall generate and implement an integrated safety management (ISM) plan describing how the Contractor will implement NETL's ES&H policy and the DOE ISM philosophy, as outlined in ISM directives, into the planning, budgeting, execution, and assessment of work activities. The plan shall describe the Contractor's approach to

(1) the integration of ISM's five functions: defining the scope of work, analyzing the hazards, developing

and implementing controls, performing work safely, and ensuring performance into its everyday work activities, and

(2) demonstrating ISM's seven guiding principles: workforce responsibility and accountability; clear roles, responsibilities, and authorities; competence commensurate with responsibilities, balanced priorities, identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization.

The Contractor shall describe in this plan how the Contractor's work will be integrated with NETL's ISM System. The Contractor shall submit the plan to the Contracting Officer or his/her representative for review and approval within 30 days after the date of contract award. This plan shall be updated annually and resubmitted to the Contracting Officer or his/her representative for review and approval.

(d) The Contractor shall comply with NETL directives on conducting safety analysis and reviews for research and development projects, support operations, and facility construction and maintenance and shall implement the requirements resulting from the analysis and review.

(e) Contractor employees shall complete mandatory ES&H training as required by the nature of job being performed or by legal, DOE or NETL requirements. The Contractor shall maintain training records for his/her employees to demonstrate that training has been completed.

(f) The Contracting Officer shall notify the Contractor, in writing, of any non-conformance with the ES&H requirements of this contract. After receipt of such notice, the Contractor shall immediately take corrective action. In the event that the Contractor fails to comply with NETL's environment, safety, and health requirements, the contracting office may, without prejudice to any other legal or contractual rights of the 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.

(g) The Contractor shall include this environment, safety, and health clause in all subcontracts requiring work at the NETL sites and shall be responsible for ensuring that subcontractors adhere to these ES&H requirements.

(h) The DOE or its authorized representative shall have the right to inspect any work areas or facilities occupied by the Contractor.

(i) The Contractor keep records such as raw data, interpreted results, reports, correspondence, and other materials proving regulatory and standard compliance, according to DOE records management schedules.

(j) Accidents or incidents resulting in human injury or property damage are to be reported immediately to the contracting officer or his/her representative. Notification, recording, and reporting requirements for accidents or incidents shall be conducted in accordance with 29 CFR 1904 and 1910 and the associated NETL directives. The contracting officer or his/her representative shall be provided with copies of all required documentation within 10 days of the accident or incident.

(k) The Contractor shall maintain an accurate record of onsite hours worked and shall provide this information to the contracting officer or his/her representative upon request in order to calculate hours-based ES&H statistics.

(l) The Contractor shall collect metrics on environment, safety, and health performance as determined by NETL in addition to those contained in their ISM plan. These metrics may change with time. The following are examples and may not represent the actual metrics that will be required to be reported: recordable injury/illness rate (total number of OSHA-defined recordable injuries and illnesses/total hours worked); days away or restricted time rate (total number of OSHA-defined lost work day cases or restricted days cases/total hours worked); and hazardous waste generated (total cubic feet of hazardous waste shipped); number of employees who have completed ES&H training on-time; number of inspections/assessments conducted; and number of employees participating in the emergency response program. The metrics shall be provided to the contracting office or his/her representative.

(m) NETL depends on volunteers to staff its emergency response organization (ERO), including the HAZMAT/rescue team. The Contractor shall allow participation of his/her employees in NETL's site-wide emergency response program. Participants shall be allowed the time necessary to fulfill ERO training obligations. The Contractor whose employees participate in emergency response functions shall be responsible for providing any additional liability insurance or supplemental insurance deemed appropriate by the Contractor for the ERO positions that their employees occupy.

### **H.31 QUALITY ASSURANCE/QUALITY CONTROL**

The Contractor shall implement the DOE work using Quality Assurance/Quality Control measures as appropriate to:

- (a) Achieve accuracy, precision, and reproducibility of data adequate to fulfill the objectives of the work to be performed under this award;
- (b) Ensure that purchased items and services meet established specifications and requirements;
- (c) Incorporate inspections as appropriate;
- (d) Continually improve the quality of the work done for DOE through the improvement of work practices guided by internal performance assessment.

### **H.32 SAFETY & HEALTH AND ENVIRONMENTAL PROTECTION**

- (a) The Contractor shall implement the DOE work in accordance with all applicable Federal, State and local laws, including codes, ordinances and regulations, covering safety, health and environmental protection.
- (b) The Contractor agrees to include paragraph (a) of this clause in first-tier subcontracts and agrees to enforce the terms of this clause.

### **H.33 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, 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.34 COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL REQUIREMENTS**

In performing work under this contract, the Contractor shall comply with all relevant Federal, state, and local statutes, ordinances, laws, and regulations.

### **H.35 LOBBYING RESTRICTION**

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.

A copy of the DOE "Lobbying Brochure" which provides a summary of the statutory and regulatory restrictions regarding lobbying activities for Federal Contractors can be found at

[http://www.management.energy.gov/policy\\_guidance/1385.htm](http://www.management.energy.gov/policy_guidance/1385.htm)

### **H.36 INCORPORATION OF CONTRACTOR'S PROPOSAL**

The Contractor's proposal in its entirety is incorporated by reference. In the event of any conflict between the other terms and conditions of the contract and those presented in the Contractor's proposal, the contract shall prevail.

*(Optional provision if Offeror proposes no-cost value added elements such as in-kind services, use of Offeror's libraries and data-bases, use of Offeror's computer models, reduced fee for certain work elements, etc )*

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

**H. 37 ACCESS TO DOE -OWNED OR LEASED FACILITIES**

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

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

(b) The Contractor shall assure:

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

(2) In completing the process for gaining physical access, that its employee (i) cooperates with DOE officials responsible for granting access to DOE –owned or leased facilities and (ii) provides additional information, requested by those DOE officials.

(c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee’s application for a security badge is or will be denied, the Contractor shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any Contractor claim against DOE.

(d) The Contractor shall return to the Contracting Officer or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE –owned or leased facilities by the Contractor’s employee(s), upon (1) the termination of this Contract; (2) the expiration of this Contract; (3) the termination of employment on this Contract by an individual employee; or (4) demand by DOE for return of the badge.

(e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE – owned or leased facilities.

All questions and compliance issues should be directed to the NETL Security Officer.

### **H.38 COMPLIANCE WITH INTERNET VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY**

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that:

- (1) All deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and
- (2) it has IPv6 technical support for development and implementation and fielded product management available.

Should the Contractor find that the Statement of Work or specifications of this contract do not conform to the IPv6 standard, it must notify the Contracting Officer of such nonconformance and act in accordance with instructions of the Contracting Officer.

### **H.39 OVERTIME APPROVALS**

No overtime is authorized to be utilized on this contract without the express written consent of the Contracting Officer. In the event the Contractor determines performance under this contract will require the use of overtime, the Contractor shall submit an overtime use plan (projection of overtime for the contract year) to the Contracting Officer for consideration and approval. If approved, this clause will be modified to incorporate the approved overtime as a not to exceed ceiling. The approvals required under this clause do not apply to the exceptions in FAR 52.222-2 Payment for Overtime Premiums subparagraph (a)(1) through (a)(4) of the clause.

### **H.40 SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (APR 2009)**

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

#### Definitions:

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

#### A. Flow Down Provision

This clause must be included in every first-tier subcontract.

#### B. Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

#### C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

#### D. Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See <http://www.dol.gov/esa/whd/contracts/dbra.htm> .

#### E. Publication

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov) , maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

#### F. Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due.

#### G. Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

## **SECTION I - CONTRACT CLAUSES**

### **I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998)**

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

Federal Acquisition Regulations (Clauses starting with 52): <http://www.arnet.gov/far/index.html>  
Department of Energy Regulations (Clauses starting with 952): <http://management.energy.gov/DEAR.htm>

### **I.2 52.202-1 DEFINITIONS. (JUL 2004)**

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

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

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

### **I.3 952.202-1 DEFINITIONS.**

(a) As prescribed in 902.200, insert the clause at FAR 52.202-1 in all contracts. The contracting officer shall substitute the following for paragraph (a) of the clause.

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

(b) The following shall be added as paragraphs (h) and (i) except that they will be designated paragraphs (g) and (h) if Alternate I of the FAR clause is used.

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

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

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

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

Federal Energy Regulatory Commission--Chairman, FERC.

### **I.4 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 paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

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

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

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

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

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

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

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

**I.6 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (SEP 2006)**

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

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

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

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

(a) *Definitions.*

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

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

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

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

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

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

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

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

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

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

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

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

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation

described in paragraph (b) of this clause.

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

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

**I.8 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.9 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)**

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

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

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

award;

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

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

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

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

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

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

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

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

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

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

**I.10 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (SEP 2007)**

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

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

"Covered Federal action" means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.

(5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term appropriated funds does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) Agency and legislative liaison by Contractor employees. (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern--

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

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

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

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

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

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

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

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure. (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

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

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

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

(g) Subcontracts. (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall

be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

**I.11 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT. (DEC 2007)**

(a) Definition.

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

(b) Code of business ethics and conduct. (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall--

(i) Have a written code of business ethics and conduct; and

(ii) Provide a copy of the code to each employee engaged in performance of the contract.

(2) The Contractor shall promote compliance with its code of business ethics and conduct.

(c) Awareness program and internal control system for other than small businesses. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract. The Contractor shall establish within 90 days after contract award, unless the Contracting Officer establishes a longer time period--

(1) An ongoing business ethics and business conduct awareness program; and

(2) An internal control system.

(i) The Contractor's internal control system shall--

(A) Facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) For example, the Contractor's internal control system should provide for--

(A) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting;

(B) An internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(C) Internal and/or external audits, as appropriate; and

(D) Disciplinary action for improper conduct.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days, except when the subcontract--

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

**I.12 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (DEC 2000)**

(a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

**I.13 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER. (AUG 2000)**

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

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

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

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

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

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as -

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101,

when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

**I.14 52.204-7 CENTRAL CONTRACTOR REGISTRATION. (APR 2008)**

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

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

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

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

“Registered in the CCR database” means that--

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

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

- (i) Company legal business.
- (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (iii) Company Physical Street Address, City, State, and Zip Code.
- (iv) Company Mailing Address, City, State and Zip Code (if separate from physical).
- (v) Company Telephone Number.
- (vi) Date the company was started.
- (vii) Number of employees at your location.
- (viii) Chief executive officer/key manager.
- (ix) Line of business (industry).
- (x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

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

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

**I.16 52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES. (OCT 2008)**

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act ([41 U.S.C. 48](#)). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or an AbilityOne central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind  
1310 Braddock Place  
Alexandria, VA 22314-1691  
(703) 310-0500; and

(2) NISH  
8401 Old Courthouse Road  
Vienna, VA 22182  
(571) 226-4660.

**I.17 952.208-70 PRINTING. (APR 1984)**

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8 1/2 by 11 inches one side only, one color. A requirement is defined as a single publication document.

(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

**I.18 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (SEP 2006)**

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

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

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

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting

the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

**I.19 952.209-72 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 9.507-2 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.

**I.20 52.215-2 AUDIT AND RECORDS - NEGOTIATION. (JUN 1999)**

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to -

(1) The proposal for the contract, subcontract, or modification;

- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) *Comptroller General* - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

- (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports*. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating -

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -

- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

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

- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

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

**I.21 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT. (OCT 1997)**

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

- (a) The Schedule (excluding the specifications).

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

**I.22 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.23 52.215-12 SUBCONTRACTOR COST OR PRICING DATA. (OCT 1997)**

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either -

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data - Modifications.

**I.24 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS. (OCT 2004)**

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be--

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

**I.25 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY. (OCT 1997)**

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

**I.26 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS. (JUL 2005)**

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) 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 31.205-6(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

**I.27 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES. (OCT 1997)**

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall -

- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
- (2) Provide the ACO or designated representative ready access to the records upon request;
- (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
- (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

**I.28 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS. (OCT 1997)**

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable -

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If -

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include -

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the

proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

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

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

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

**I.29 52.216-7 ALLOWABLE COST AND PAYMENT. (DEC 2002)**

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

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

(3) The designated payment office will make interim payments for contract financing on the [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30<sup>th</sup>"] day after the designated billing office receives a proper payment request.

In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

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

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

directly for the contract;

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

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

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

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

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

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

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

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

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

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

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

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

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

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

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

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting

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

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

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

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

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

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

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

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

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

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

(1) Shall be the anticipated final rates; and

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

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

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

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

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) Upon approval of a completion invoice or voucher submitted by the Contractor in

accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

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

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

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

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

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

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

### **I.30 952.216-7 ALLOWABLE COST AND PAYMENT.**

#### Alternate I

If the contract is with a nonprofit organization, other than an educational institution; or a State or local government, modify the clause at FAR 52.216-7 Allowable Cost and Payment by deleting from paragraph (a) the phrase "Subpart 31.2" and substituting for it "Subpart 31.7."

#### Alternate II

When contracting with a commercial organization modify paragraph (a) of the clause at FAR 52.216-7 by adding the phrase "as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR)," after the acronym "(FAR)".

### **I.31 52.216-19 ORDER LIMITATIONS. (OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than [*insert dollar figure or quantity*], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor -

- (1) Any order for a single item in excess of [*insert dollar figure or quantity*];
- (2) Any order for a combination of items in excess of [*insert dollar figure or quantity*]; or
- (3) A series of orders from the same ordering office within [ ] days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within [ ] days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

**I.32 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 after [*insert date*].

**I.33 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. (MAY 2004)**

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

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any

studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract -

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

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

(1) Means a small business concern -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**I.34 52.219-14 LIMITATIONS ON SUBCONTRACTING. (DEC 1996)**

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for -

(1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

**I.35 52.219-70XX SECTION 8(A) DIRECT AWARDS (JUNE 1998)**

This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to a Memorandum of Understanding between the Small Business Administration (SBA) and the Department of Energy (DOE). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) Contractor under the 8(a) program. The cognizant SBA district office is:

[TBD TO BE COMPLETED BY CONTRACTING OFFICER AT TIME OF AWARD.]

The SBA District office and address can be found at this Internet address: <http://www.sba.gov/regions/states.html>

DOE is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, DOE shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. DOE shall also coordinate with SBA prior to processing any novation agreement. DOE may assign contract administration functions to a contract administration office.

The Contractor agrees:

1. to notify the Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership or control.
2. to adhere to the requirements of 52.219-14, Limitations on Subcontracting.

**I.36 52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS. (JUN 2003)**

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer -

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) "Agreement." A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The [*insert name of SBA's contractor*] will notify the [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

**I.37 952.219-70 DOE MENTOR-PROTEGE PROGRAM. (MAY 2000)**

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

**I.38 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)**

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

**I.39 52.222-2 PAYMENT FOR OVERTIME PREMIUMS. (JUL 1990)**

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed [\*] or the overtime premium is paid for work -

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with

administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall -

(1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

\* Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in subparagraph (a)(1) through (a)(4) of the clause.

**I.40 52.222-3 CONVICT LABOR. (JUN 2003)**

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

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

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

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

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

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

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

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

(iv) The rates of pay and other conditions of employment will not be less than those paid

or provided for work of a similar nature in the locality in which the work is being performed; and

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

**I.41 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION. (JUL 2005)**

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

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

**I.42 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (FEB 1999)**

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

The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

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

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**I.43 52.222-26 EQUAL OPPORTUNITY. (MAR 2007)**

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

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

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

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

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

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

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

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

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

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

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

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

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

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

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

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

**I.44 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (SEP 2006)**

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

All employment openings means all positions except executive and top management, those positions that will be

filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

Executive and top management means any employee--

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

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

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

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

Special disabled veteran means--

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

Veteran of the Vietnam era means a person who--

- (1) Served on active duty for a period of more than 180 days and was discharged or released from

active duty with other than a dishonorable discharge, if any part of such active duty occurred--

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed--

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

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

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings. (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

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

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

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

(e) Postings. (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall--

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

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

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

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

**I.45 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES. (JUN 1998)**

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

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

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

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

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

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

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

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

the Act.

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

**I.46 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (SEP 2006)**

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

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

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

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

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

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

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

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

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

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

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

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

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**I.47 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES. (DEC 2004)**

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

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs.

Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board  
Division of Information  
1099 14th Street, N.W.  
Washington, DC 20570  
1-866-667-6572  
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to--

- (1) Contractors and subcontractors that employ fewer than 15 persons;
- (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;
- (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
- (4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that--
  - (i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and
  - (ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or
- (5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall--

- (1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
- (2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or
- (3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

**I.48 52.222-41 SERVICE CONTRACT ACT OF 1965. (NOV 2007)**

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

"Act" means the Service Contract Act of 1965 (41 U.S.C. 351, et seq.)

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

"Service employee," 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 Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

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

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

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

(i) For each employee subject to the Act -

(A) Name and address and social security number;

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

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

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

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of

this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

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

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

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

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

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

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

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

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

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

anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**I.49 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES. (MAY 1989)**

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

*This Statement is for Information Only:*

*It is not a Wage Determination*

**Employee Class Monetary Wage - Fringe Benefits**

[TBD]

[TBD]

**I.50 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS). (NOV 2006)**

(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 (d) 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.51 52.223-3 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.52 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. (AUG 2003)**

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

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

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

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

- (1) The emergency planning reporting requirements of section 302 of EPCRA.
- (2) The emergency notice requirements of section 304 of EPCRA.
- (3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.
- (4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.
- (5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.
- (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148.

**I.53 52.223-6 DRUG-FREE WORKPLACE. (MAY 2001)**

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

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

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

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

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

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

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

(b) The Contractor, if other than an individual, shall - within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration -

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about -
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The Contractor's policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs;

and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will -

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

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

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

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

**I.54 52.223-10 WASTE REDUCTION PROGRAM. (AUG 2000)**

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

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

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

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

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

**I.55 52.223-14 TOXIC CHEMICAL RELEASE REPORTING. (AUG 2003)**

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

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

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

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

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

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

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

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

(iii) Major group codes 20 through 39.

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

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

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

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

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

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that

is no longer exempt, shall -

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

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

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

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

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

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

**I.56 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS. (DEC 2007)**

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

"Energy-efficient product" --

(1) Means a product that--

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR products or FEMP-designated products) at the time of contract award, for products that are--

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless--

(1) The energy-consuming product is not listed in the ENERGY STAR Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for--

(1) ENERGY STAR at <http://www.energystar.gov/products>; and

(2) FEMP at [http://www1.eere.energy.gov/femp/procurement/eep\\_requirements.html](http://www1.eere.energy.gov/femp/procurement/eep_requirements.html).

**I.57 52.224-1 PRIVACY ACT NOTIFICATION. (APR 1984)**

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

**I.58 52.224-2 PRIVACY ACT. (APR 1984)**

(a) The Contractor agrees to -

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

(i) The systems of records; and

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

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

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

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

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

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

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

**I.59 952.224-70 PAPERWORK REDUCTION ACT. (APR 1984)**

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

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

**I.60 52.225-5 TRADE AGREEMENTS. (NOV 2007) (DOE Deviation) (FEB 2008)**

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

~~"Caribbean Basin country end product" -~~

~~(1) Means an article that -~~

~~(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or~~

~~(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and~~

~~(ii) Is not excluded from duty free treatment for Caribbean countries under 19 U.S.C. 2703(b).~~

~~(A) For this reason, the following articles are not Caribbean Basin country end products:~~

~~(1) Tuna, prepared or preserved in any manner in airtight containers;~~

~~(2) Petroleum, or any product derived from petroleum;~~

~~(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and~~

~~(4) Certain of the following: textiles and apparel articles; footwear; handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;~~

~~(B) Access to the HTSUS to determine duty free status of articles of these types is available at <http://www.usitc.gov/tata/hts/>. In particular, see the following:~~

~~(1) General Note 3(c), Products Eligible for Special Tariff treatment.~~

~~(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States–Caribbean Basin Trade Partnership Act of 2000.~~

~~(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).~~

~~(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States–Caribbean Basin Trade Partnership Act; and~~

~~(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.~~

"Designated country" means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

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

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

"Designated country end product" means a WTO GPA country end product, an FTA country end product, a least developed country end product, ~~or a Caribbean Basin country end product.~~

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

"Free Trade Agreement country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"Least developed country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

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

"U.S.-made end product" means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"WTO GPA country end product" means an article that--

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) Delivery of end products. The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

**I.61 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (FEB 2006)**

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

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

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

**I.62 970.5227-1 RIGHTS IN DATA--FACILITIES (DEC 2000)**

(a) *Definitions.*

- (1) *Computer data bases*, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) *Computer software*, as used in this clause, means
  - (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and
  - (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) *Data*, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term “data” does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) *Limited rights data*, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government’s rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.
- (5) *Restricted computer software*, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government’s rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.
- (6) *Technical data*, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (7) *Unlimited rights*, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.*

- (1) The Government shall have:
  - (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
  - (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;
  - (iii) The right to 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)(3) of this clause.

- (iv) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
  - (v) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause (“Rights in Limited Rights Data”) or paragraph (f) of this clause (“Rights in Restricted Computer Software”); and
  - (vi) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.
- (2) The Contractor shall have the right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause.
  - (3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) *Copyrighted Material.*

- (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.
- (2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.
- (3) 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, including any follow-on contractor performing essentially the same functions as contracted for under this contract.

(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 noticed 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.

(f) *Subcontracting.*

- (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
- (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
  - (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
  - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(g) *Rights in Limited Rights Data.* Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an

irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

#### Limited Rights Notice

These data contain "limited rights data," furnished under Contract No.

\_\_\_\_\_ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

#### (h) *Rights in Restricted Computer Software.*

- (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

#### Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. \_\_\_\_\_. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
  - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
  - (3) Reproduced for safekeeping (archives) or backup purposes;
  - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
  - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

#### Restricted Rights Notice--Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. \_\_\_\_\_ with (name of Contractor).

(End of Notice)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(i) *Relationship to patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

*Alternate I (DEC 2000).* As prescribed in 48 CFR 970.2704-3(a), where access to Category C-24 restricted data is contemplated in the performance of a contract the contracting officer shall insert the phrase "and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and

technology” after “laser isotope separation” and before the comma in paragraph (b)(2)(ii) of the clause at 48 CFR 970.5227-1, Rights in Data--Facilities, as appropriate

**I.63 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.

**I.64 52.228-7 INSURANCE - LIABILITY TO THIRD PERSONS. (MAR 1996)**

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed -

(1) For that portion -

(i) Of the reasonable cost of insurance allocable to this contract; and

(ii) Required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the

Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for -

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor);  
or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) -

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of -

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall -

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

**I.65 52.229-3 FEDERAL, STATE, AND LOCAL TAXES. (APR 2003)**

(a) As used in this clause--

"All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Contract date," means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

**I.66 52.232-1 PAYMENTS. (APR 1984)**

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions 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 contract price.

**I.67 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.

**I.68 52.232-17 INTEREST. (OCT 2008)**

(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 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 611 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 (e) 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) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) *Final Decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) 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, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

**I.69 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.70 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR. (APR 1984)**

Funds are not presently available for performance under this contract beyond [ ]. The Government's obligation for performance of this contract beyond that date 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 for performance under this contract beyond [ ], until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

**I.71 52.232-22 LIMITATION OF FUNDS. (APR 1984)**

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule

or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause -

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of -

(i) The amount then allotted to the contract by the Government or;

(ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this clause, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of -

(1) The amount previously allotted by the Government or;

(2) If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

**I.72 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.73 52.232-25 PROMPT PAYMENT. (OCT 2008) ALTERNATE I (FEB 2002)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections [2.101](#), [32.001](#), and [32.902](#) of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—

(1) Due date.

(i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

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

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments.

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 ([7 U.S.C. 182\(3\)](#)), and as further defined in

Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 ([16 U.S.C. 4003\(3\)](#)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 ([7 U.S.C. 499a\(4\)](#)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 ([7 U.S.C. 4502\(e\)](#)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.

(3) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., [52.232-38](#), Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration, or [52.232-34](#), Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment

prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR [52.233-1](#), Disputes.

(6) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR Part 1315.

(7) Additional interest penalty.

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

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

(ii) (A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government

regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payment.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Fast payment procedure due dates.* If this contract contains the clause at [52.213-1](#), Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(e) *Invoices for interim payments.* For interim payments under this cost-reimbursement contract for services—

(1) Paragraphs (a)(2), (a)(3), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i) do not apply;

(2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and

(3) The contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR [52.216-7](#), Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

**I.74 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION. (OCT 2003)**

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either -

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT

information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for -

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and -

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.<P>

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available

payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

**I.75 52.233-1 DISPUTES. (JUL 2002)**

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

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

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

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

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

**I.76 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.

**I.77 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM. (OCT 2004)**

United States law will apply to resolve any claim of breach of this contract.

**I.78 952.235-70 KEY PERSONNEL. (APR 1994)**

The personnel specified in Section H to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the contractor without the written consent of the contracting officer: Provided, that the contracting officer may ratify in writing such diversion and such ratification shall constitute the consent of the contracting officer required by this clause. Section H to this contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

**I.79 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION. (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

**I.80 52.237-3 CONTINUITY OF SERVICES. (JAN 1991)**

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

(1) Furnish phase-in training; and

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

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

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

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

**I.81 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS. (APR 1984)**

(a) Notwithstanding any other clause of this contract -

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

**I.82 52.242-3 PENALTIES FOR UNALLOWABLE COSTS. (MAY 2001)**

(a) *Definition.* "Proposal," as used in this clause, means either -

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which -

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to -

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed -

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

**I.83 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS. (JAN 1997)**

(a) The Contractor shall -

(1) Certify any proposal to establish or modify final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**I.84 52.242-13 BANKRUPTCY. (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government

contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

**I.85 52.243-2 CHANGES - COST-REIMBURSEMENT. (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 when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the -

- (1) Estimated cost, delivery or completion schedule, or both;
- (2) Amount of any fixed fee; and
- (3) Other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) of this clause, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

**I.86 52.244-2 SUBCONTRACTS. (JUN 2007)**

(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) 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 (c) or (d) of this clause.

(c) 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.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: [ ]

(e)(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 (b), (c) or (d) 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 (b), (c) or (d) of this clause.

(f) 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.

(g) 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).

(h) 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.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: [ ]

**I.87 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.88 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. (MAR 2007)**

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

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

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

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at

all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

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

**I.89 52.245-1 GOVERNMENT PROPERTY. (JUN 2007)**

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

"Acquisition cost" means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

"Cannibalize" means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

"Contractor-acquired property" means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

"Contractor inventory" means--

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the

termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

"Contractor's managerial personnel" means the Contractor's directors, officers, 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 operation at any one plant or separate location; or
- (3) A separate and complete major industrial operation.

"Demilitarization" means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

"Discrepancies incident to shipment" means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

"Equipment" means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

"Government-furnished property" means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.

"Government property" means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

"Material" means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling and special test equipment.

"Nonseverable" means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

"Plant equipment" as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

"Precious metals" means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Property" means all tangible property, both real and personal.

"Property Administrator" means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

"Provide" means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

"Real property" means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing

special tooling, special test equipment, or plant equipment.

"Sensitive property" means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

"Surplus" property means excess personal property not required by any Federal agency as determined by the Administrator of the "General" Services Administration (GSA).

(b) Property management. (1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management except where inconsistent with law or regulation. During the period of performance, the Contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, destroyed, or stolen property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(c) Use of Government property. The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer. The Contractor shall not modify, cannibalize, or make alterations to Government property unless this contract specifically identifies the modifications, alterations or improvements as work to be performed.

(d) Government-furnished property. (1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting

Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)(i) The Contracting Officer may by written notice, at any time--

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

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

(2) Fixed-price contracts. (i) 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.

(ii) Title to each item of equipment, special test equipment and special tooling 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.

(iii) 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--

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

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

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

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

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

(3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts. (i) 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.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--

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

(B) Commencement of processing of the property for use in contract performance; or

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

(iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as "Government property)", are subject to the provisions of this clause.

(f) Contractor plans and systems. (1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) Acquisition of Property. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and material control operations.

(ii) Receipt of Government Property. The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) Government-furnished property. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) Contractor-acquired property. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) Records of Government property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).

- (2) Quantity received (or fabricated), issued, and balance-on-hand.
- (3) Unit acquisition cost.
- (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
- (5) Unit of measure.
- (6) Accountable contract number or equivalent code designation.
- (7) Location.
- (8) Disposition.
- (9) Posting reference and date of transaction.
- (10) Date placed in service.

(B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) Physical inventory. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) Subcontractor control. (A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss, damage, destruction or theft of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) Reports. The Contractor shall have a process to create and provide reports of discrepancies; loss, damage, destruction, or theft; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, damage, destruction, or theft. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, damage, destruction, or theft to the property administrator as soon as the facts become known or when requested by the Government.

(B) Such reports shall, at a minimum, contain the following information:

- (1) Date of incident (if known).

- (2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).
- (3) Quantity.
- (4) Unique Item Identifier (if available).
- (5) Accountable Contract number.
- (6) A statement indicating current or future need.
- (7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.
- (8) All known interests in commingled property of which the Government property is a part.
- (9) Cause and corrective action taken or to be taken to prevent recurrence.
- (10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Contractor was or will be reimbursed or compensated.
- (11) Copies of all supporting documentation.
- (12) Last known location.
- (13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

(vii) Relief of stewardship responsibility. Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is--

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, damage, destruction or theft of Government property;

(B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(C) Disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) Utilizing Government property. (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government property with property not owned by the Government.

(ix) Maintenance. The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) Property closeout. The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(3) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(g) Systems analysis. (1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.

(3) Should it be determined by the Government that the Contractor's property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this contract, and/or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) Contractor Liability for Government Property. (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies--

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. Contractor's managerial personnel, in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; all or substantially all of the Contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.

(4) 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.

(i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the Contractor's exclusive remedy and the Government shall not be liable to suit for breach of contract for the following:

(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) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible.

(j) Contractor inventory disposal. Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.

(1) Scrap to which the Government has obtained title under paragraph (e) of this clause.

(i) Contractor with an approved scrap procedure.

(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that--

(1) Requires demilitarization;

(2) Is a classified item;

- (3) Is generated from classified items;
- (4) Contains hazardous materials or hazardous wastes;
- (5) Contains precious metals; or
- (6) Is dangerous to the public health, safety, or welfare.

(ii) Contractor without an approved scrap procedure. The Contractor shall submit an inventory disposal schedule for all scrap. The Contractor may not dispose of scrap resulting from production or testing under this contract without Government approval.

(2) Predisposal requirements. (i) Once the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority--

- (A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical;
- (B) May purchase the property at the acquisition cost; or
- (C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

(3) Inventory disposal schedules. (i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify--

- (A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;
- (B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and
- (C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for--

- (A) Special test equipment with commercial components;
- (B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (e.g., computers, computer components, peripheral equipment, and related equipment);

(E) Precious metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) The Contractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description, condition code, and reporting location may be grouped in a single line item.

(4) Submission requirements. The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--

(i) 30-days following the Contractor's determination that a Government property item is no longer required for performance of this contract;

(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.

(5) Corrections. The Plant Clearance Officer may--

(i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(6) Post submission adjustments. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(7) Storage. (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121<sup>st</sup> day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(8) Disposition instructions. (i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of

Contractor inventory as directed by the Plant Clearance Officer. If not returned to the Government, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) Disposal proceeds. As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(10) Subcontractor inventory disposal schedules. The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.

(k) Abandonment of Government property. (1) The Government shall not abandon sensitive Government property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government--furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) Communication. All communications under this clause shall be in writing.

(m) Contracts outside the United States. If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**I.90 52.246-25 LIMITATION OF LIABILITY - SERVICES. (FEB 1997)**

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that -

(1) Occurs after Government acceptance of services performed under this contract; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate

location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

**I.91 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS. (JUN 2003)**

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

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

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

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

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

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

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

Statement of Unavailability of U.S.-Flag Air Carriers

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

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(End of statement)

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

**I.92 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS. (FEB 2006)**

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx

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

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

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

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

- (i) The Contracting Officer, and
- (ii) The:

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

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

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

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

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

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial items unless--

(i) This contract is--

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are--

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military--

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

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

Office of Costs and Rates  
Maritime Administration  
400 Seventh Street, SW  
Washington DC 20590

Phone: (202) 366-4610.

**I.93 952.247-70 FOREIGN TRAVEL. (DEC 2000)**

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.

**I.94 52.249-6 TERMINATION (COST-REIMBURSEMENT). (MAY 2004)**

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

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

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

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

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

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

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

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

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

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the

Contractor and in which the Government has or may acquire an interest.

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

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

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

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

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

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

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

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

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

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor -

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted -

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

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

**I.95 52.249-14 EXCUSABLE DELAYS. (APR 1984)**

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

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

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

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

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

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

**I.96 52.251-1 GOVERNMENT SUPPLY SOURCES. (APR 1984)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

**I.97 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS. (DEC 2000)**

(a) The contractor shall take advantage of travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

**I.98 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES. (APR 1984)**

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

(b) The use in this solicitation or contract of any [insert regulation name] (48 CFR [ ]) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

**I.99 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.

**THE FOLLOWING CLAUSES PERTAIN ONLY TO COST PLUS FIXED FEE TASK ORDERS**

**I.100 52.216-8 FIXED FEE. (MAR 1997)**

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

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

**THE FOLLOWING CLAUSES PERTAIN ONLY TO FIXED PRICE TASK ORDERS**

**I.101 52.232-2 PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS. (APR 1984)**

The Government shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

**I.102 52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (FEB 2002)**

(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 discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment 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.

**I.103 52.232-11 EXTRAS. (APR 1984)**

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the Contracting Officer.

**I.104 52.243-1 CHANGES - FIXED-PRICE. (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 when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(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.

**I.105 RESERVED**

**I.106 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM). (APR 1984)**

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

**I.107 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE). (APR 1984)**

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to -

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (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.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

**THE FOLLOWING CLAUSES I.108 THROUGH I.110 PERTAIN ONLY TO TASK ORDERS ISSUED AGAINST THIS CONTRACT WHEN USING FUNDS APPROPRIATED OR OTHERWISE MADE AVAILABLE BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (PUB. L. 111-5). THESE ARE IN ADDITION TO ALL CLAUSES LISTED ABOVE.**

**I.108 52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)**

- (a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).
- (b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

**I.109 52.204-11 AMERICAN RECOVERY AND REINVESTMENT ACT – REPORTING REQUIREMENTS (MAR 2009)**

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

“*Contract*,” as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.* For discussion of various types of contracts, see FAR Part 16.

“*First-tier subcontract*” means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

“*Jobs created*” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“*Jobs retained*” means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“*Total compensation*” means the cash and noncash dollar value earned by the executive during the contractor’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

- (1) Salary and bonus.
- (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- (3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (5) Above-market earnings on deferred compensation which is not tax-qualified.
- (6) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(d) The Contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov>.

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

(A) In the subcontractor's preceding fiscal year, the subcontractor received—

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

**I.110 52.215-2 AUDIT AND RECORDS – NEGOTIATION (JUN 1999) ALTERNATE I (MAR 2009)**

(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 or Inspector General.

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(i) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and

(ii) Interview any officer or employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating -

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -

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

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

(g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

**SECTION J - LIST OF ATTACHMENTS**

**J.1 LIST OF ATTACHMENTS/EXHIBITS**

ATTACHMENT	DESCRIPTION
A-1	NETL Introduction
A-2	Statement of Work
B	Reporting Requirements
B-1	Cost Management/Invoice Detail/Summary Staffing Report Forms
B-2	Contract Organization Chart
B-3	Subcontract Status Report
C	Performance Evaluation Plan
D	Position Qualifications
E	Wage Determinations/Collective Bargaining Agreements

## J.2 ATTACHMENT A-1 – NETL INTRODUCTION

### INTRODUCTION TO THE NATIONAL ENERGY TECHNOLOGY LABORATORY

The National Energy Technology Laboratory (NETL) is a U.S. Department of Energy (DOE) national laboratory that produces technological solutions to America's energy challenges. The laboratory focuses on finding tools and processes that simultaneously address the three overarching issues that characterize today's energy situation in the United States: energy affordability, supply security, and environmental quality.

NETL has three research laboratories that span the Nation. Laboratories in Pittsburgh, Pa., and Morgantown, W.Va., conduct a broad range of research and development (R&D) to increase the supply of traditional energy resources, improve the efficiency and environmental performance of thermoelectric power generation, and help end-users to conserve energy. Researchers at the NETL laboratory in Albany, Ore., focus on developing advanced materials for use in the energy industry. NETL also has small offices in Houston, Texas, and Fairbanks, Alaska, that address challenges unique to those energy-rich regions. All five locations support DOE's mission to advance the national, economic, and energy security of the United States.

As the only national laboratory owned and operated by DOE, NETL is unique in how it conducts business and in the relationships it forms with industry, academia, research organizations, and other national laboratories. First and foremost, the laboratory conducts cutting-edge R&D on site. About one quarter of NETL's 1,200 Federal and contractor employees are engaged in research with industry, Government, and academic partners to solve problems that would otherwise become barriers to commercializing advanced power systems, fuels, and environmental and waste-management technologies. NETL research includes collaboration with businesses, universities and non-profit entities.

In addition to performing research on site, NETL applies its extensive technology- and project-management capabilities to shape, fund, and manage research that is conducted throughout the United States and in more than 40 foreign countries. The laboratory's research portfolio includes more than 1,300 projects, with a total award value of nearly \$11 billion and private sector cost-sharing of nearly \$6 billion. To secure these projects, NETL uses a variety of contracting arrangements with corporations, small businesses, universities, non-profit organizations, and other national laboratories and Government agencies.

NETL also provides strategic information and analysis to the policymakers responsible for providing direction and funds to ensure that America has a continuing supply of clean, affordable energy. NETL provides (1) expert scientific and engineering analysis of technology options, developmental pathways, energy scenarios, and technical advancements; (2) programmatic and socio-economic impact analysis and benefits appraisals; (3) expert simulation and modeling using state-of-the-art systems; and (4) analysis of energy systems infrastructure interdependencies, including policy implications.

NETL is a proactive supporter of [educational initiatives](#) at all levels. NETL funds nearly 500 R&D projects at U.S. universities to advance energy science and technology and to provide a trained workforce for the energy industry of the future. NETL's outreach efforts also include a speakers' bureau, visiting professor program, Adopt-a-School program, high school science bowls, in-school demonstrations, computer donations to area schools, job shadowing for high school students, and other initiatives that encourage careers in science and engineering. NETL contractors will be required to support NETL in its educational outreach activities.

It is expected that NETL's site-support contractors will provide world-class expertise in disciplines related to research and technology, business and economics, the environment, education, and energy markets to achieve highly credible results and performance.

NETL is organized into seven subordinate Offices or Centers:

- **Strategic Center for Natural Gas and Oil (SCNGO)** integrates all elements of DOE's natural gas and oil research. SCNGO is charged with implementing science and technology development to resolve the

environmental, supply, and reliability constraints of producing and using oil and gas resources—resources that account for more than 60 percent of the energy consumed in the United States. With core competencies and expertise in all aspects of natural gas and oil, SCNGO investigates and manages R&D leading to improved natural gas and oil production and use. SCNGO invests in projects that promise tangible benefits to the American people, including a cleaner environment and increased domestic natural gas and oil production. [SCNGO organizational chart](#) [PDF-13KB]

- **Strategic Center for Coal (SCC)** works to ensure national energy security and economic prosperity through production of clean, affordable electricity and fuels from coal, the Nation’s most abundant energy resource. SCC is charged with implementing research, development, and demonstration to resolve the environmental, supply, and reliability constraints of producing and using coal resources. Technologies that allow the environmentally responsible use of coal will allow the United States to meet growing electricity demand. [SCC organizational chart](#) [PDF-17KB]
- **Office of Systems, Analyses and Planning (OSAP)** conducts studies of complex, large systems—such as industrial or ecological processes—and the interactions among those systems, including social, economic, political, regulatory, technological, design, and management institutions. The complex nature of these subjects requires an interdisciplinary approach. System studies provide input to decisions on issues such as national plans and programs, resource use and environmental and energy security policies, and deployment of energy technology. System studies are also used to support planning exercises at various organizational levels. [OSAP organization chart](#) [PDF-14KB]
- **Project Management Center (PMC)** harnesses expertise and talent for non-fossil-energy research, development, and demonstration projects, including those with other Federal organizations such as the Office of Electricity Delivery and Energy Reliability, the Department of Homeland Security, and the Office of Energy Efficiency and Renewable Energy. PMC performs overall management and implementation of these customers’ advanced initiatives, providing technical expertise, analytical tools, and a full suite of implementation skills. [PMC organization chart](#) [PDF-17KB]
- **Office of Research and Development (ORD)** performs R&D in fossil energy and environmental science. Building on NETL’s historic strengths and competencies, ORD focuses on four research topics recognized as important issues for the 21st century:
  - **Computational and Basic Sciences** leads to tools that enable more rapid and efficient scale-up of new sub-systems, devices and components, to enable more cost effective demonstration of new technologies.
  - **Energy System Dynamics** focuses on development of technologies for clean, efficient, fuel flexible power generation, including advanced gas turbines and fuel cells, hybrid systems, gasification systems (coal and biomass), and CO2 capture technologies.
  - **Geological and Environmental Systems** focuses on the minimization and abatement of environmental problems associated with the development and use of fossil fuels.
  - **Materials Science** specializes in life-cycle research of most metals, alloys, and ceramics, and the recycling and remediation of waste streams associated with these processes.[ORD organization chart](#) [PDF-29KB]
- **Office of Institutional and Business Operations (OIBO)** plans, directs, and coordinates administrative, operational, construction, and staff support activities for NETL. OIBO’s responsibilities include—
  - Organization and human resource management.
  - The laboratory’s Chief Financial Officer function.
  - Budgetary and financial analyses and administration.
  - Information technology management, maintenance, and implementation.
  - Execution of NETL’s environment, safety, and health program, including compliance and remediation.
  - Acquisition and assistance services.
  - Site management, including design, construction, operation, and maintenance of NETL facilities.

- Security services.
- Real and personal property management. [OIBO organization chart](#) [PDF-30KB]
- **The Office of Crosscutting Functions (OCF)** plans, directs, and coordinates policy, administrative, and site-support contract management activities that crosscut laboratory activities. The office provides policy direction for the Federal project management function, performance measurement, security services, and site-support contract management. Particular functional and technical analysts participate individually or with teams to ensure timely information exchange, and to coordinate responses to action items affecting DOE. [OCF organization chart](#) [PDF-18KB]

Figure 1 below shows FY 2009 NETL budget information. Non-Fossil-Energy (FE) funding includes funds from the Office of Energy and Efficiency and Renewable Energy (EERE), the Office of Electricity Delivery and Energy Reliability (OE), and other Federal agencies.

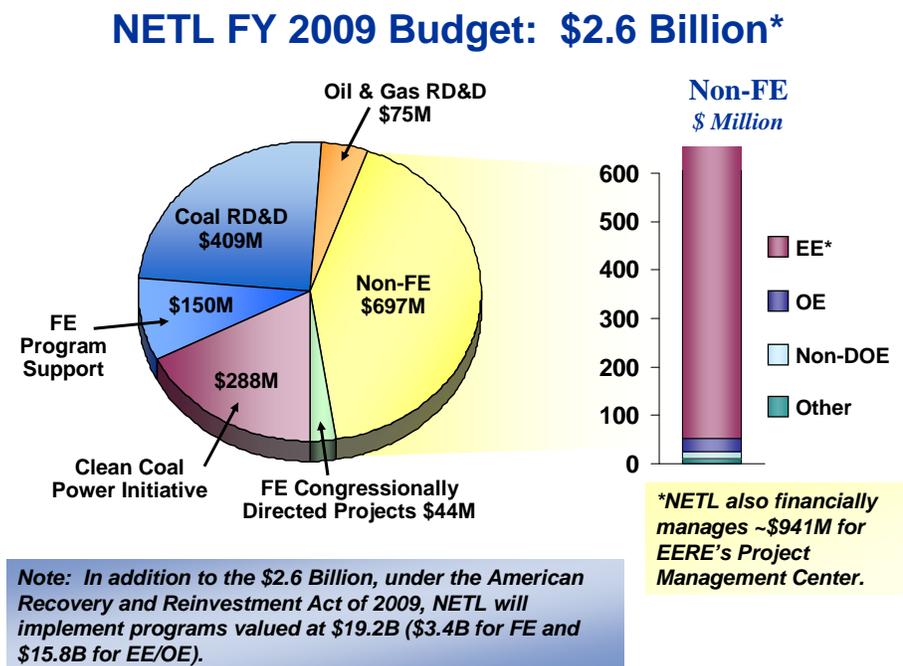


Figure 1. NETL Budget for FY 2009

### J.3 ATTACHMENT A-2 – STATEMENT OF WORK

## **Statement of Work Support Administrative Services (SAS) For the National Energy Technology Laboratory (NETL)**

### 1.0 CONTRACT PURPOSE

The purpose of this contract is to provide administrative support services to the U.S. Department of Energy's (DOE) National Energy Technology Laboratory (NETL). The support shall be provided to span all NETL sites, except where noted. The functions performed under this service contract will include administrative support to five main service areas: Acquisition & Assistance Division (AAD), Financial Management Division (FMD), Office Management (OM), Information Management, and Event Management.

### 2.0 SCOPE

#### 2.1 Types of Services

*The Contractor shall provide the following types of services under this contract:*

- **Acquisition & Assistance Division (AAD) Support**
- **Financial Management Division (FMD) Support**
- **Office Management (OM) Support**
  - Clerical Support
  - Receptionist Support
  - Word Processing Support
- **Information Management Support**
  - Records Management
  - Library Services
  - Copy Center & Fax Services
  - Audio/Visual & Conference Room Support
- **Event Management Support**

#### 2.2 Resources

The Contractor shall furnish all personnel, facilities, equipment, materials, and supplies necessary to perform the work under this contract, except for that specifically identified as being provided by the Government, which is governed by the clause entitled "Government Property" that can be found in Section H of this contract.

### 3.0 APPLICABLE DOCUMENTS

All DOE/NETL Orders, DOE/NETL forms, and the following documents that are referenced in this statement of work can be found in the NETL electronic reading room at <http://www.netl.doe.gov/business/solicitations/ssc2008/index.html>.

- **Service Area: Financial Management Division (FMD) Support**
  - U.S. Department of Energy Accounting Handbook
  - Automated Standard Application for Payment (ASAP)
  - U.S. General Services Administration Federal Travel Regulations (FTR)

- U.S. Department of Energy Travel Manual
- **Service Area: Office Management (OM) Support**
  - NETL Correspondence Guidelines
  - U.S. Government Printing Office Style Manual
  - U.S. Department of Energy Executive Secretariat Correspondence Style Guide
  - NETL Order 243.1, Records Management Program
  - Privacy Act of 1974 (5 U.S.C. 552a)
  - NETL Procedure 251.1-1, Directives Management Process
  - NETL Order 142.3, Unclassified Foreign National Visits & Assignments Program
  - NETL Order 205.2B, Foreign National Access to DOE Cyber Systems
- **Service Area: Information Management Support**
  - NETL Order 243.1, Records Management Program
  - NETL Order 243.2, Vital Records Protection Program
  - NETL Procedure 243.2-2A, Records Management Inventory
  - NETL Procedure 243.2-5C, Files Operation
  - NETL Procedure 243.2-7, Records Scheduling and Disposition
  - NETL Procedure 243.2-8, Vital Records
  - National Commission on New Technological Uses of Copyright Works
  - NETL IT Governance Process
- **Service Area: Event Management Support**
  - DOE Order 110.3A, Conference Management
  - NETL Procedure P 110.3-1-C, Event Management
  - Office of Fossil Energy (FE), Conference Policies and Procedures
  - ASFE Memo, Feb. 1, 2006, Conference Management Procedures

The Contractor shall adhere to all pertinent NETL Focused Standards as indicated in the Focused Standards List. The Focused Standards List can be viewed on the internet in the established electronic reading room, during the solicitation phase, at <http://www.netl.doe.gov/business/solicitations/ssc2008/index.html>, and on the NETL intranet, after contract award, at [http://intranet/ESH\\_ISO/standard/focused.pdf](http://intranet/ESH_ISO/standard/focused.pdf). This Focused Standards List has been primarily derived from selected standard references contained in NETL-issued directives. This list is the totality of ES&H standards and requirements that (through analysis of specific operations) apply to NETL's operations. It should not be construed that all of the standards on the list would be applicable to operations required under this solicitation.

#### 4.0 SERVICE AREAS

The requirements in this statement of work are grouped under Service Areas. As indicated in Section L of this contract, the majority of services will be provided to NETL's Morgantown and Pittsburgh sites. The site notation, i.e., "(PGH)", "(MGN)", "(ALB)", "(HOU)", and "(FAIR)", following a performance objective means the requirement currently exists only at that particular site. NETL reserves the right to redefine locations for tasks as needed.

#### **4.1 SERVICE AREA: ACQUISITION & ASSISTANCE DIVISION (AAD) SUPPORT**

The Contractor shall provide a broad spectrum of support to NETL's Acquisition & Assistance Division (AAD). The support shall include, but not be limited to, the following:

- A. Operate and maintain data in various AAD information/operations systems, as well as extract data for reporting purposes.
- B. Collect, process, enter, and validate data for these systems and any subsequently developed systems.
- C. Systems requiring support/access may include, but will not be limited to, the following:
  - 1. Federal Information Tracking System (FITS)
  - 2. Unsolicited Proposal Tracking System
  - 3. Procurement Automated Data System (PADS-Web)
  - 4. Federal Procurement Data System – Next Generation (FPDS-NG)
  - 5. Strategic Integrated Procurement Enterprise System (STRIPES)
  - 6. I-manage Integrated Data Warehouse (IDW)

*Note: The NETL Strategic Integrated Procurement Enterprise System (STRIPES) implementation will replace the systems listed in section 4.1 C 3 and 4 and the need for the data collection, data entry, and data input support will be phased out, not before FY 2010. It is anticipated that once the legacy systems are no longer in use, the needed STRIPES support will be primarily a reporting function.*

- D. Operate and maintain support for all systems; respond to requests for information from the tracking systems and maintain all related files; provide data collection and data input as required into the system and validate entry after input; generate standard reports, and generate and maintain statistical procurement graphs and annual view graph requirements; provide ad hoc reports; satisfy quarterly, semi-annual, and annual reporting requirements to Headquarters; and obtain on-line credit reports from Dun & Bradstreet.

*Note: The implementation of STRIPES in FY 2009 has impacted the support described above in section 4.1 A – D, the extent of which is not yet completely defined. The Contractor may be required to maintain the legacy systems (listed in section 4.1 C 3 and 4) for an indefinite period of time while also providing support for STRIPES. This dual system support will include providing assistance for legacy systems (PADS and FPDS-NG), as well as STRIPES. Support shall include, but not be limited to, the following:*

- 1. Operate and maintain support for the systems.
- 2. Respond to requests for information from the tracking systems and maintain all related files.
- 3. Validate entry after input into the system.
- 4. Extract data needed to generate standard reports, and generate and maintain statistical procurement graphs and annual view graph requirements.
- 5. Provide ad hoc reports.
- 6. Satisfy quarterly, semi-annual and annual reporting requirements to Headquarters.

- E. Provide administrative support to the DOE Unsolicited Proposals (USP) Manager. This includes, but is not limited to, provide support for the weekly USP status log, pre-evaluation log, award acceptance memos; follow-up delinquent USP actions; maintain USP documentation files; respond to USP information/status inquiries; and other administrative reports as required.
- F. Provide closeout support such as routine and ad hoc closeout reports.
- G. Input, operate, and maintain FITS to facilitate tracking, status, and distribution control of AAD contractual deliverable documents; initiate system-generated letters; receive and distribute reports submitted by awardees; and prepare and distribute ad hoc reports.
- H. Provide administrative support for filing and distribution on an as needed basis for official acquisition and assistance files and reference materials to support award administration for limited legacy documents, and provide assistance for transfer of closeout records generated by AAD personnel (PGH).
- I. Assist in the reporting of work efforts, status, and statistical data related to AAD work efforts, including ad hoc requests from other NETL organizations. Deliverables shall include, but not be limited to, the following:
  - 1. Generate and provide distribution for standard reports using data extracted from various systems on a routine basis.
  - 2. Generate and provide distribution for standard closeout reports.
  - 3. Provide all metric and balanced-scorecard supporting information as required by AAD.
  - 4. Provide all ad hoc requests for information from any and all available systems as requested by AAD or other entities within NETL.
  - 5. Prepare and submit, at a minimum, the following reports in accordance with the following schedules:
    - a) Monthly Reports Due 10 Working Days After the End of the Month:
      - (1) New Financial Assistance Awards
      - (2) New Procurement Awards
      - (3) New Financial Assistance Awards & Modifications
      - (4) New Procurement Awards & Modifications
      - (5) Total Completed Actions
      - (6) Active Cost Share Awards
      - (7) Active and Inactive Awards
      - (8) Inactive Not-In-Closeout Aging Report
      - (9) FY Closeout Goal Progress
      - (10) Monthly Closeout Progress
      - (11) Closeout Opportunities for NETL
      - (12) Contract Closeout Summary
      - (13) Small Business Awards
    - b) Quarterly Reports Due 10 Working Days After the End of the Quarter:
      - (1) Metric Support (varies by specific metric for period)
    - c) Yearly Reports Due 10 Working Days After the HQ-Established Closing Date:
      - (1) Balanced Score Card Support (varies by specific measure for the period)
    - d) Ad-Hoc Reporting:
      - (1) Reports as requested in a timely manner to meet requestor's needs.

## 4.2 **SERVICE AREA: FINANCIAL MANAGEMENT DIVISION (FMD) SUPPORT**

### **Activity 1: FMD Data Entry Support**

The Contractor shall provide data entry, research, review, and resolution of errors and exceptions originating in NETL's financial systems. This support shall include, but not be limited to, the following:

- A. Record obligations and deobligations for purchase orders related to credit card and small purchases and other miscellaneous documents. Maintain files on those obligation documents as required. Verify accounting data in accordance with FMD guidelines.
- B. Reconcile monthly purchase card statements from credit card holders:
  - 1. Reconcile and verify accounting data.
  - 2. Obtain verification of receipt of goods and services via Simplified Purchasing System (SPS), any other subsequently developed system, and/or cardholder.
  - 3. De-obligate residual balances.
  - 4. Submit information to the Oak Ridge Financial Service Center (ORFSC).
- C. Maintain Standard Accounting and Reporting System (STARS) supplier information for award documents (purchase orders, miscellaneous documents, etc.). Enter and update approving and program officials, vendor tax identification, Dun & Bradstreet numbers, banking information, and prompt payment coding. Verify vendor name and address.
- D. Review, reconcile, and record monthly warehouse charges.
- E. Reconcile Interagency Payment and Collection (IPAC) billings.
- F. Research and prepare documentation for deposits (checks received by NETL) into NETL's treasury account/lockbox.
- G. Record STARS entries on Application Desktop Integrator (ADI) spreadsheets as required.
- H. Research accounting entries that failed internal system edit checks.
- I. Document and provide monthly performance reports related to accomplishing this activity.

### **Activity 2: FMD Site Support Contractor (SSC) Data Collection/ Deliverables**

The Contractor shall assist FMD with the support and format of all Site Support Contractor (SSC) data. Support shall include, but not be limited to, collect, sort, consolidate, summarize, and verify SSC staffing, cost, obligation, payment, and budgetary data. The Contractor shall provide staff knowledgeable of spreadsheet and data analysis using software so they may create formats as designated by FMD or manipulate data in existing formats. Also, staff will be required to be knowledgeable in FMD financial systems such as STARS, so that entries can be made and reports generated. Monthly deliverables shall include, but not be limited to, the following:

- A. Collect Cost Management Reports (CMRs), create data lists, and assemble one workbook containing one worksheet for each SSC contract.
- B. Provide burn rate tables and graphs/charts, as well as trend line graphs using total contract obligations, plan, and total incurred costs for each SSC contract.
- C. Provide a reconciliation of costs at the task and accounting flex field (AFF) level from the CMR to the official accounting records contained in STARS for each SSC contract.

- D. Collect, sort, summarize, and consolidate into one workbook, the full-time equivalent (FTE) staffing data for each SSC contract.
- E. Document and provide monthly performance reports related to accomplishing this activity.

**Activity 3: Planning System Support**

The Contractor shall provide support for DOE's Office of Fossil Energy's (FE) planning system and the NETL Budget Directive (BD) system. Support shall include, but not be limited to, the following:

- A. Collect, review for accuracy, enter data into, and update FE's planning system for activities/projects/programs throughout their life cycle (*e.g., program execution plans, carryover, obligations, de-obligations, etc.*); develop and provide reports from FE's planning system; and review and reconcile financial management reports and statements as required.
- B. Periodically reconcile FE's planning system database; reconcile mid-year and end of fiscal year funding and obligations with STARS, BD System, PADS, and/or any subsequently developed system. Assist in the design or enhancement of FE's planning system, or other potential follow-on systems.
- C. Assist in monitoring and maintaining the NETL BD System design, validation tables, lookup tables, access, training, new file creation and reconciliation.
- D. Assist in FE's planning system training, and distribute FE's planning system reports. Train Federal and Contractor employees on use of the electronic BD and maintain/create BD files.
- E. Specific tasks shall include, but not be limited to, the following:
  - 1. Maintain common access drive for all planning system programs and new BD files.
  - 2. Coordinate and review mass updates with HQ for the planning system archival database.
  - 3. Download data weekly and monthly to NETL's Project Management Center (PMC) for upload to the ProMIS database.
  - 4. Set up and maintain residual unplanned execution areas in the planning system for balances of procurement requests and contract obligations so as to balance with the Congressional marks.
  - 5. Generate reports for NETL high-level metrics.
  - 6. Generate National Laboratory reports.
- F. Document and provide monthly performance reports related to accomplishing this activity.

**Activity 4: Travel Management Support**

The Contractor shall provide travel support to all NETL staff and invitational travelers. This support shall include, but not be limited to, the following:

- A. Utilize GovTrip and potential follow-on systems to review travel authorizations and vouchers for accuracy and compliance with DOE and Federal travel regulations, correct and update/cancel as necessary, process for approval, and datalink in the system.
- B. Review the transaction report for exceptions and resolve problems as required.
- C. Use the DOE financial management system(s) for research, analysis and data entry, as required.
- D. Prepare the NETL Corporate Travel Credit Card spreadsheet and submit to ORFSC on a monthly basis.

- E. Update the GovTrip database as needed (*i.e., enter invitational travelers, new employees, accounting codes, and approving officials*).
- F. Process and monitor travel reservation requests to the Travel Management Center (TMC) and resolve problems as required.
- G. Perform quarterly review of unpaid travel authorizations and report status to FMD on a quarterly schedule.
- H. Assist travelers and office managers with GovTrip and travel questions, including invitational travel and non-NETL Federal travel.
- I. Provide phone coverage during core hours of 8:00 AM until 4:30 PM (EST) on workdays.
- J. Maintain travel-related files and official passport files.
- K. Answer travel in-box e-mail delivered between 8:00 AM and 3:30 PM (EST) within one hour. Any other e-mail shall be answered by 9:00 AM (EST) the next workday.
- L. Prepare and process documents for foreign travel, prepare cost estimate, and enter data in the Foreign Travel Management System (FTMS) and potential follow-on systems.
- M. Enter foreign travel closeout information into the FTMS within 30 days of the return from travel.
- N. Process visa applications for international travel and process passport applications for renewal. Track passports, visas, and the approval of foreign travel for timely receipt.
- O. Document and provide monthly performance reports related to accomplishing this activity.

#### **4.3 SERVICE AREA: OFFICE MANAGEMENT SUPPORT**

##### **4.3.1 Sub-Service Area: Clerical Support**

###### **Activity 1: Administrative Support**

The Contractor shall provide administrative services supporting the various NETL directorates and divisions. Directorates and divisions may have unique service requirements specific to their functions. The support shall include, but not be limited to, the following:

- A. Develop, type, proofread, edit, and transmit correspondence (letters, memoranda, reports, spreadsheets, presentations, forms, etc.) and ensure conformance with the NETL Correspondence Guidelines, the U.S. Department of Energy Executive Secretariat Correspondence Style Guide, and the U.S. Government Printing Office Style Manual using NETL's standard software programs (*e.g., MS Office including Word, Excel, PowerPoint, Access, etc.*). Collect, copy, fax, scan, and file information needed in order to produce and distribute such correspondence.
- B. Utilize and maintain databases and information systems; review and reconcile data.
- C. Prepare and coordinate travel arrangements including travel authorizations, vouchers, reports, and other necessary travel documents.

- D. Coordinate logistics (*e.g. scheduling, resources, etc.*) for meetings, events, and inspections.
- E. Establish and maintain filing systems in accordance with NETL Order 243.1 Records Management Program.
- F. Sort and distribute incoming mail; pick-up and deliver on-site interoffice packages, concurrence packages, and pouch mail bags; and process all outgoing mail including Federal Express packages (preparation, tracking, and reports).
- G. Answer phones and direct callers to appropriate personnel for assistance, and/or take accurate phone messages and relay to appropriate personnel in a timely manner.
- H. Prepare purchase and storerooms requisitions, and ensure that items are received and distributed. Maintain supply cabinets and forms inventory.
- I. Keep copy rooms and office equipment areas (printers, copy, fax, shredding, & scanner machines, etc.) organized, well stocked, and in working order.
- J. Update division and/or directorate intranet home web pages as directed.
- K. Complete and route work request forms and ensure work is completed.
- L. Assist with coordination and support of various outreach activities, such as the Science Bowl(s).

**Activity 2: Directives Management Support**

The Contractor shall provide support for NETL Directives Management. The support shall include, but not be limited to, the following services consistent with NETL Procedure 251.1-1:

- A. Provide consultation in the preparation of NETL directives. All directives shall be created in the format provided by the Federal directives manager in Microsoft Word.
- B. Receive draft DOE directives, provide them to the appropriate NETL Subject Matter Expert (SME) for response, submit NETL responses in the Departmental Directives Review & Comment System (RevCom), manage the approval cycle for draft NETL directives, track their status, obtain signatures, and maintain a record of the responses.
- C. Maintain the record set of signed NETL directives, ensure that an official copy of each directive is posted as Adobe Acrobat (pdf) files to the NETL intranet, and archive to the records center.
- D. Maintain a list of applicable and non-applicable DOE directives, the Focused Standards List, and the directives webpage.
- E. Meet weekly with the Federal directives manager (DOE task manager) to discuss program issues.
- F. Continually maintain a Directives Tracking System and make it available to the task manager. The Directives Tracking System shall be a Microsoft Excel spreadsheet or other system as approved by the Federal directives manager.

- G. Ensure that all new or modified directives are approved by the appropriate authority prior to distribution, and that all directive cancellations are approved by the appropriate authority.
- H. Refer to the Federal directives manager for the names of SMEs and concurrence lists, and approval authorities for the directives and policy/process decisions regarding the Directives Management System.

**Activity 3: Project Management Center (PMC) Support**

The Contractor shall provide data management support for activities associated with NETL's Project Management Center (PMC). The support shall include, but not be limited to, the following:

- A. Input contractual programmatic information into various informational databases.
- B. Perform quality assurance (QA) of data entered from remote locations by states or other third parties.
- C. Provide training and technical assistance in the use and support of various informational databases.
- D. Generate reports from various informational databases using standard parameters or special queries as needed.
- E. Review and reconcile data as needed.
- F. Provide and manage a receipt and notification process.

**Activity 4: Unclassified Foreign National Visit and Assignment (UFNV&A) Support**

The Contractor (U.S. citizenship is required for this activity) shall provide support for the NETL UFNVA Program, as per NETL Order 142.3 Unclassified Foreign National Visit and Assignment (UFNV&A) Program, and the NETL Cyber Security Program, as per NETL Order 205.2B Foreign National Access to DOE Cyber Systems. The support shall include, but not be limited to, the following:

- A. Provide daily management and analytical oversight of both UFNVA Program and Cyber Security Program, which includes on-going procedural documentation and project planning.
- B. Provide quality assurance and quality control as required.
- C. Make recommendations and work with responsible parties to resolve system/process issues as required.
- D. Act as liaison between UFNVA Program manager, Cyber Security Program manager, HQ, hosts, NETL security, receptionist, and all involved parties.
- E. Maintain proficiency in FACTS and attend required training as designated by the NETL UFNVA Program manager and approved by the Subtask Contracting Officer Representative (SCOR).
- F. Process and submit all necessary reports, notices, etc., ensuring all deadlines are met and all information is error free.

- G. Maintain and protect files containing biographical data in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Establish and maintain filing systems in accordance with NETL Order 243.1 Records Management Program.

#### **4.3.2 Sub-Service Area: Receptionist Support**

The Contractor (U.S. citizenship is required for this Sub-Service Area) shall maintain NETL's reception areas. Support in this area shall include, but not be limited to, the following:

- A. Greet visitors and arrange for the responsible NETL employee(s) to escort them to the appropriate office/location. This includes coordinating and obtaining any required equipment for visitors, such as safety glasses, hardhats, etc.
- B. Answer and transfer telephone calls; take and relay messages.
- C. Manage and maintain lobby area including conference room and directory marquee; maintain and replenish displays of brochures, maps, directions, and other printed information materials.
- D. Send, receive, and distribute items delivered by the NETL shuttle driver and ensure timely delivery to appropriate offices.
- E. Confirm conference room reservations and resolve scheduling conflicts. Provide "Meet Me" numbers for teleconferencing meetings.
- F. Provide general clerical support (typing, copying, faxing, scanning, relaying messages, etc.) for those using lobby area and conference rooms.
- G. Assist Unclassified Foreign National Visits and Assignments (UFNV&A) support specialist as necessary, which shall include, but not be limited to, the following:
  - 1. Maintain proficiency in Foreign Access Central Tracking System (FACTS) and attend required training as designated by the NETL UFNVA manager and approved by the Subtask Contracting Officer Representative (SCOR).
  - 2. Enters information into FACTS database and processes as required.
- H. Utilize NETL Form 470.1-5 Foreign Visitors (log sheet) to document approved foreign-national access, and validate passport, visa, or other United States Citizenship and Immigration Services (USCIS) information for all foreign visitors and assignees.
- I. Work with the Emergency Public Affairs Team and the Public Affairs Coordinator to route incoming calls and record necessary information in accordance with NETL Form 151.1-3/5 Handling of Calls in the event of an emergency or NETL incident.
- J. Provide total count of visitors by site to the SCOR by the end of each FY.

#### **4.3.3 Sub-Service Area: Word Processing Support**

The Contractor shall provide word processing support functions to NETL. This support shall include, but not be limited to, the following:

- A. Type and convert documents from handwritten, electronic, or recorded sources, and scan documents from paper to electronic format. Documents may include technical reports, tables, graphs, view graphs, presentations, spreadsheets, etc.
- B. Maintain various databases and develop new databases as requested.

- C. Prepare and convert documents for multimedia publication.
- D. Provide desktop publishing services including production of the monthly NETL newsletter.
- E. Submit monthly report on the status of all forms to the SCOR within 10 working days from the end of the month. The report shall include, but not be limited to the following: date received, requestor, organizations supported, date needed, priority, description, job category, date completed, current status, estimated time and actual time to complete, and complexity of job. Provide monthly chart to designate which organizations received support.
- F. Establish and maintain an up-to-date electronic record of all electronic and paper-based forms. This includes maintaining a complete electronic inventory of all stock (NETL and departmental forms stock and other miscellaneous items such as envelopes, letterhead, memorandum, and conference notepads).
- G. Replenish and order 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, NETL multiple-set forms, and other miscellaneous items ordered from the Government Printing Office (GPO), as necessary, to ensure that an adequate supply of such items is available for NETL personnel.
- H. Provide for the orderly storage, inventory, ordering, and distribution of hard copy forms for each of the various groups of forms. Maintain one physical stock record of the most up-to-date revision for all forms and miscellaneous items ordered and used by NETL personnel.
- I. Design/redesign NETL forms in standard format, as requested by the NETL forms manager.
- J. Prepare documentation and files required for submission to the GPO.
- K. Submit monthly report on the status of all forms to the SCOR within 10 working days from the end of the month. The report should include, but not be limited to the following: date received, requestor, organizations supported, date needed, priority, description, job category, date completed, current status for review/approval, estimated time and actual time to complete, and job type (new, revision, deleted). Provide monthly chart to designate which organizations received support.
- L. Maintain a historical archive of the two prior versions for all electronic and paper-based forms.
- M. Copy final form revisions to the Local Area Network (LAN) after approval by the NETL forms manager. Coordinate form numbering with the NETL directives point of contact (POC).
- N. Operate a forms management system. This shall include, but is not limited to, forms development software, spreadsheets, etc.

#### **4.4 SERVICE AREA: INFORMATION MANAGEMENT SUPPORT**

##### **4.4.1 Sub-Service Area: Records Management**

The Contractor shall provide records management and records storage support functions in compliance with all National Archives and Records Administration (NARA), DOE, and NETL Directives, and requirements related to the NETL Records Management Program. Support shall include, but not be limited to, the following:

- A. Provide support for NETL's records management system, both electronic format and paper-based, using appropriate quality controls to ensure accuracy in tracking storage locations, schedules, retrieval, timely disposition, and inventory of all NETL records. Provide support for the use of automated and manual records management systems.
- B. Provide retention and retrieval services involving NETL's records holding area, maintain control of inactive records boxes in the records holding area, or any other storage location used for records holding.
- C. Schedule and preserve all electronic, audiovisual, and micrographics records with inventories, required reports, and disposition authorities, as these programs are initialized and ongoing.
- D. Provide records management services with respect to environment, safety, and health records by 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. Disposition schedules shall be developed and followed for sensitive and non-sensitive files.
- E. Provide support for the use of automated or electronic document management systems and manual systems relating to NETL's information products including, but not limited to, warehousing, retrieval, disposition, and the associated records management for these products.
- F. Perform an inventory of all NETL records and records boxes that are stored and maintained at NETL or any Federal Records Center, as required by the NETL Records Officer.
- G. Provide disposition reports for the Records Officer to submit to all NETL organizations that have records eligible for destruction.
- H. Maintain an electronic database of record boxes shipped and retrieved from Federal Records Centers and NARA.
- I. Assist the NETL Records Officer in preparing and presenting records training for NETL employees and specific record custodians.
- J. Make all arrangements for appropriate disposition of records when scheduled criteria have been met or, when applicable, move boxes to appropriate storage locations.
- K. Update vital records in the Off-Site Emergency Records Center, as required by the NETL Records Officer.

##### **4.4.2 Sub-Service Area: Library Services**

The Contractor shall maintain an NETL technical library. Library activities shall include, but not be limited to, the following:

- A. Acquire reference material regarding NETL's lead mission areas, as well as other associated fields, including the acquisition of paper-based materials and subscriptions to electronic materials.
- B. Catalog, tag, and control the library collection of books, journals, periodicals, and magazines.
- C. Check out, check in, and account for the library inventory intended for circulation at NETL.
- D. Maintain a repository of all NETL contract and Cooperative Research and Development Agreement (CRADA) final reports and summaries; all technical papers published by NETL employees; and all patents issued to NETL employees; as well as any associated patent licenses.
- E. Perform literature, patent, and NETL information product searches.
- F. Provide inter-library services to NETL and external libraries.
- G. Provide support for the use of automated library or electronic document management systems and manual systems to support NETL information products and the Library Support Sub-Service Area.
- H. Ensure that inter-library loan photocopy requests from NETL to outside lenders are filled in accordance with existing copyright law and the National Commission on New Technological Uses of Copyright Works (CONTU) guidelines. Maintain reports showing compliance in this area for the required three years from the date of request.

#### **4.4.3 Sub-Service Area: Copy Center & Fax Services**

The support shall include, but not be limited to, the following:

- A. Provide high-quality reproduction services on a demand basis.
- B. Provide document binding services for documents generated from both electronic and hard copy originals (PGH).
- C. Provide reproduction, lamination, and signage services for various outreach activities, such as the Science Bowl(s).
- D. Provide management services for reproduction machines, and convenience copiers, including:
  - 1. Provide acquisition recommendations, manage copier subcontracts (as required), maintain and monitor the equipment necessary to fulfill NETL's duplicating service requirements (PGH).
  - 2. Assist users, maintain, and troubleshoot self-serve copy 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 (PGH).
  - 3. Designate a primary and alternate individual as POC for all service requests relating to the equipment. The POC shall perform the following duties:

- a) Place all service calls for equipment repairs to ensure consistent and concise information regarding the required repairs.
  - b) 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.
  - c) Report any repairs requiring professional services to the COR for approval (PGH).
- 4. Distribute Government publications (*i.e., Congressional reports, Code of Federal Regulations, etc.*) to NETL personnel in electronic format and/or hard copy (PGH).
  - 5. Order and maintain supply levels sufficient to provide uninterrupted reproduction service (PGH).
- E. Establish and maintain a usage record system of the copy center services and convenience copiers for the purpose of administrative control and voucher/invoice reconciliation (PGH).
- F. Provide telefacsimile services at the PGH site and monitor and deliver documents received through the NETL fax gateway for all of NETL. The support shall include, but not be limited to, the following:
- 1. Operate telefacsimile equipment.
  - 2. Send and receive non-sensitive messages and notify recipients of their arrival.
  - 3. Monitor the NETL fax gateway mailbox and forward faxes received to addressees.
  - 4. Maintain supply levels sufficient to provide uninterrupted telefacsimile service.
  - 5. Establish and maintain a usage record system for telefacsimiles and appropriate files.
  - 6. Provide requestors with documentation confirming receipt or transmittal of faxes.
  - 7. Establish and maintain a log of faxes sent and received.
  - 8. Notify telefacsimile recipients on the day of receipt. Transmit urgent faxes immediately upon receipt.
- G. Deliverables shall include, but not be limited to, the following:
- 1. Monthly records disposition and accession reports.
  - 2. Records inventory report for the NETL records archives. Quarterly report of records eligible for disposition at Federal Records Centers.
  - 3. Monthly library statistics including, but not limited to, NETL requests, library loans, and dialog searches.
  - 4. Monthly usage record of copy center and convenience copiers.
  - 5. Daily log of faxes sent and received.

**4.4.4 Sub-Service Area: Video Teleconference, Audio/Visual & Conference Room Support**

The Contractor shall provide support for NETL's conference rooms, video conferencing rooms, conference centers, and the systems and services required to effectively utilize these venues. This will include video teleconferencing systems, projectors, displays, conference room computers, conference phones, collaboration boards (e.g. SmartBoards), television (cable, satellite, fiber, etc.) systems, and audio/video systems used in conference facilities. Specific duties shall include, but not be limited to, the following:

- A. Develop required processes for scheduling conference rooms, documenting user requirements and provisioning services.
- B. Work with local scheduling staff (*i.e., receptionist*), requestor, and/or requestor's support staff to resolve scheduling conflicts.

- C. Schedule meeting services (i.e., video bridging, audio bridging, web conferencing, etc.) required to support end-user requirements.
- D. Coordinate and arrange the conference centers and conference rooms per end-user requirements and ensure the following:
  - 1. Rooms are properly configured, with systems and sessions operational at least ten minutes (or earlier if requested) prior to the scheduled meeting start time.
  - 2. Support staff is available to assist participants until the meeting begins.
  - 3. An operator is available (when requested) to run audio/visual systems, web conferencing tools, etc., during the meeting.
  - 4. An operator is available to provide on-call troubleshooting for conferences that experience problems or technical difficulties during the conference.
- E. Develop instructions for conference room systems and provide periodic end-user training.
- F. Manage NETL accounts for video bridge, web conferencing, audio conferencing, and television (cable, satellite, fiber, etc.) services.
- G. Maintain property records for all equipment and systems assigned for use in conference rooms (i.e., computers, SmartBoards, conference phones, projectors, video conferencing systems, and components, etc.).
- H. Maintain all audio/visual, television (cable, satellite, fiber, etc.), and computer systems in good working condition. Coordinate required hardware maintenance, software maintenance, and computer system upgrades.
- I. Provide design coordination and sustaining engineering for all conference room, conference facility, and television (satellite, cable, fiber, etc.) systems and services.
- J. Provide necessary acquisition and management support for all service and maintenance contracts for conference room, conference facility, and television (cable, satellite, fiber, etc.) systems.
- K. Provide design, acquisition and installation support for the distribution of television (cable, satellite, fiber, etc.) services to designated offices, conference rooms and conference facilities.
- L. Provide problem resolution, including, but not limited to, identifying problems; troubleshooting and repairing of conference room, conference facility, and television (satellite, cable, fiber, etc.) systems; coordinating and escorting external maintenance providers; coordinating the return of equipment to vendors for repair; and tracking equipment returned for repair.
- M. Update system configurations in accordance with the NETL IT governance process.
- N. Provide resource utilization and capacity planning support. This shall include, but not be limited to, base lining utilization of rooms and services (video conferencing, web conferencing, etc.) and identifying utilization trends. Provide recommendations for service changes to meet expected user requirements.
- O. Provide recommendations for equipment and service replacement, upgrade, and enhancement to ensure the delivery of services at acceptable levels.

- P. Generate the following reports: summary of video conferencing system use by room/user; summary of web conference service use by room/user, summary of audio conferencing bridge use by room/user, and summary of system trouble calls and status.

#### **4.5 SERVICE AREA: EVENT MANAGEMENT SUPPORT**

The Contractor shall provide conference management support services for NETL in accordance with the following orders, directives, policies and procedures:

- DOE Order 110.3A, Conference Management
- NETL Procedure P 110.3-1C, Event Management
- Office of Fossil Energy, Conference Policies and Procedures
- ASFE Memo, Feb. 1, 2006, Conference Management Procedures

Conference Management Services shall include, but not be limited to, the following:

##### **Activity 1: Facility Determination and Facility Contract Negotiation**

- A. Assign the appropriate staff to support the event (conference/meeting) upon notification. All parties (host, NETL event manager, and Contractor) shall sign a requirements document to ensure that all are aware of and are in agreement with the details of the event.
- B. After event details have been confirmed, obtain offers from three qualified, FEMA-approved host facilities, and work with the NETL event manager to determine which facilities meet the conference/meeting requirements. Recommend a conference facility based on an assessment of which offer provides the best value for the Government. Reserve the selected host facility with a verbal agreement, upon concurrence of the NETL event manager.
- C. Prepare a complete cost estimate for each event for use in preparing the request for conference approval concurrence package.
- D. Negotiate a final facility contract with the selected host facility to obtain the best value for the Government, submit the final negotiated facility agreement for review, and sign the facility contract after approval is received. Signing shall occur within one week after delivery of the final negotiated facility agreement to the Contractor.

##### **Activity 2: Event Planning and Support**

- A. Maintain a database of potential conference/meeting attendees using Peopleware software.
- B. Distribute electronic invitations/reminders to potential conference/meeting attendees using Goldmine software or other NETL-approved means, and register participants using Peopleware software.
- C. Assist in identifying foreign national registrants/attendees, and advise the event host so formal access request packages can be prepared and submitted within the prescribed time guidelines.
- D. Respond to telephone inquiries and written correspondence concerning events within one business day of receipt of the inquiry.
- E. Assemble meeting materials and materials to be distributed at events, and provide for delivery of those items to and from the conference/meeting.

- F. Prepare registration lists, assemble papers and electronic media to be presented at events, and arrange for the electronic distribution, posting on the NETL web site, or publishing of the conference proceedings.
- G. Provide on-site logistical support at events, including audio visual (AV) support as needed. Staff the event registration desk with at least one staff member during normal event hours.
- H. Coordinate with the selected conference facility regarding accommodations including meals, meeting rooms, and necessary equipment.
- I. Verify identity of all registered attendees by reviewing passports, visas, Permanent Resident Cards, arrival/departure records or other documentation for foreign nationals at the time of registration, as well as driver's licenses, Government IDs, birth certificates, etc., for U.S. citizens.
- J. Respond to requests for conference proceedings subsequent to the event and provide support for the production and distribution of approved NETL CD and printed media including, but not limited to, conference proceedings, energy-related handbooks, and technology overviews.
- K. Assist with coordination and support of various outreach activities, such as the Science Bowl(s).

**Activity 3: Event Accounting**

- A. Provide support and accounting for conference finances. Support shall include, but not be limited to, collection of all registration fees (voluntary meal fees) and, when applicable, invoicing of attendees for any outstanding fees. Process and account for all registration fees on a weekly basis in accordance with proper accounting procedures.
- B. Review invoices for accuracy and itemize expenses at the conclusion of each event.
- C. Submit an accounting report detailing the sources of all conference/meeting income, expenses, and any shortfalls or excesses for final invoice payment.
- D. Submit a final financial report reconciling all bank accounts and any outstanding invoices.
- E. Provide input for preliminary annual budgets for conferences/meetings as deemed necessary, including estimating the number of events per year based on the previous year's experience.

## ACRONYM DEFINITIONS

AAD	Acquisition & Assistance Division
ADI	Application Desktop Integrator
AFF	Accounting Flex Field
ALB	Albany, Oregon
ASAP	Automated Standard Application for Payment
ASFE	Assistant Secretary for Fossil Energy
AV	Audio Visual
BD	Budget Directive
CD	Compact Disk
CMR	Cost Management Report(s)
CONTU	National Commission on New Technological Uses of Copyright Works
COR	Contract Officer Representative
CRADA	Cooperative Research and Development Agreement
DOE	Department of Energy
ES&H	Environmental Safety & Health
EST	Eastern Standard Time
FACTS	Foreign Access Central Tracking System
FAIR	Fairbanks, Alaska
FAR	Federal Acquisition Regulations
FE	Office of Fossil Energy
FEMA	Federal Emergency Management Agency
FITS	Federal Information Tracking System
FMD	Financial Management Division
FPDS-NG	Federal Procurement Data System – Next Generation
FTE	Full-Time Equivalent
FTMS	Foreign Travel Management System
FTR	Federal Travel Regulations
FY	Fiscal Year
GPO	Government Printing Office
HOU	Houston, Texas
HQ	Headquarters
ID	Identification
IPAC	Interagency Payment and Collection
IT	Information Technology
LAN	Local Area Network
MGN	Morgantown, West Virginia
MS	Microsoft
NARA	National Archives and Records Administration
NETL	National Energy Technology Laboratory
OM	Office Management
ORFSC	Oak Ridge Financial Service Center
PADS-Web	Procurement Automated Data System
PATS	Procurement Action Tracking System
PGH	Pittsburgh, Pennsylvania
PMC	Project Management Center
POC	Point of Contact
PRATS	Procurement Request Authorization Tracking System
ProMIS	Project Management Information System
QA	Quality Assurance
RevCom	Review and Comment Section

SAS	Support Administrative Services
SCOR	Subtask Contracting Officer Representative
SME	Subject Matter Expert(s)
SOW	Statement of Work
SPS	Simplified Purchasing System
SSC	Site Support Contracts/Site Support Contractor
STARS	Standard Accounting and Reporting System
STRIPES	Strategic Integrated Procurement Enterprise System
TMC	Travel Management Center
UFNV&A	Unclassified Foreign National Visits & Assignments
U.S.	United States
U.S.C.	United States Code
USCIS	United States Citizenship & Immigration Services
USP	Unsolicited Proposals

# REPORTING REQUIREMENTS CHECKLIST

<b>1. AWARDEE: TBD</b>	<b>2. IDENTIFICATION NUMBER: TBD</b>
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**REPORT SUBMISSION:**

Reports shall be submitted to the electronic addresses and mailing address indicated in the NETL-identified distribution list provided in the post award debriefing. One hard copy of each report must be submitted to the Contract Specialist (CS) and one to the appointed Contracting Officer's Representative (COR).

**4. PLANNING AND REPORTING REQUIREMENTS**

	FORM NO.	FREQ.	NO. OF COPIES		FORM NO.	FREQ.	NO. OF COPIES
<b>A. GENERAL MANAGEMENT</b>				<b>E. TECHNICAL</b> (One paper copy and One pdf electronic file copy)			
* <input checked="" type="checkbox"/> Management Plan	None	Y	**	<input type="checkbox"/> Technical Progress Report	None		
* <input checked="" type="checkbox"/> Status Report	None	M	**	Final Report			
<input checked="" type="checkbox"/> Summary Report	1332.2	M	**	<input type="checkbox"/> Draft for Review	None		
<input type="checkbox"/> Quality Assurance Mgmt Plan	None	Y	**	<input type="checkbox"/> Final for Approval	None		
<b>B. SCHEDULE/LABOR/COST</b>				<input type="checkbox"/> Topical Report			
* <input type="checkbox"/> Milestone Schedule/Plan	1332.3			<b>F. PROPERTY</b>			
* <input type="checkbox"/> Labor Plan	1332.4			<input checked="" type="checkbox"/> Report of Contractor's Property Management System	None	P	**
<input checked="" type="checkbox"/> Subcontract Status Report	See Text	Y	**	<input checked="" type="checkbox"/> Annual Report of Property in The Custody of Contractor	F580.1-8	YP	**
<input checked="" type="checkbox"/> Cost Management Report	See Text	MI	**	<input checked="" type="checkbox"/> High Risk Property Report	F580.1-25	YP	**
<input checked="" type="checkbox"/> Invoice Detail Report	See Text	MI	**	<input checked="" type="checkbox"/> Report of Physical Inventory of Capital Equipment	None	I	**
<input checked="" type="checkbox"/> Staffing Report Summary	See Text	MI	**	<input checked="" type="checkbox"/> Report of Physical Inventory of Sensitive Items	None	YP	**
<input checked="" type="checkbox"/> Organization Chart	See Text	S	**	<input checked="" type="checkbox"/> Report of Termination or or Completion Inventory	SF-1428; SF-120; F580.1-7	FC	**
<b>C. EXCEPTION</b>				<b>G. OTHER</b>			
<input type="checkbox"/> Conference Record	None			<input type="checkbox"/> Key Personnel Staffing Report	None		
<input checked="" type="checkbox"/> Hot Line Report	None	A	**	<input type="checkbox"/> Subcontracting Report	SF-294		
<input type="checkbox"/> Journal Articles/Conference Papers and Proceedings	None			<input type="checkbox"/> Summary Subcontracting Report	SF-295		
<b>D. ENVIRONMENTAL ES&amp;H</b>				<input type="checkbox"/> Software	None		
<input type="checkbox"/> Hazardous Substance Plan	None	O	**	<input checked="" type="checkbox"/> EEO Compliance Report	None	Y	**
<input type="checkbox"/> Hazardous Waste Report	None	FC	**				
<input checked="" type="checkbox"/> ES&H Hot Line Report	None	A	**				
<input checked="" type="checkbox"/> DOE NETL ES&H Reports (DOE O 231.1, M 231.1-1, O 232.1)	See Orders & Manuals	A	**				
<input checked="" type="checkbox"/> Integrated Safety Management Plan (DOE 450.4)	See DOE Order	O***	**				

**5. Frequency Codes and Due Dates:**

Definition	Calendar days due after event	Definition	Calendar days due after event
A – As Required (See attached text for applicability)	0	O – Once After Award	30
C – Contract Change	15	Q – Quarterly (End of Calendar Quarter)	30
FC – Final End of Effort	0	S – Semi-Annual (End of project year and project year half)	20
FD – Final Technical – Draft Version	-60	Y – Yearly (End of project year, see narrative for details)	30
M – Monthly	15	PY – Yearly Plan for following Federal Fiscal Year	-15
MI – Monthly prepared and submitted at same time as invoice	15	E – End of Evaluation Period	20

Property Reports  P – Property Management System – Within 6 months of award date YP – Yearly Property – due 10/15 for period ending 9/30 I – Physical Inventory of Capital Equipment – Biennial from award start date	Other Web-based reports <a href="http://www.esrs.gov">http://www.esrs.gov</a>  SS – Subcontracting Report - Semi-annual due 4/30 and 10/30 for period ending 3/31 and 9/30 respectively, submit on-line at <a href="http://www.esrs.gov">http://www.esrs.gov</a> YS – Summary Subcontracting Report - Annually, due 10/30 for period ending 9/30, submit on-line at <a href="http://www.esrs.gov">http://www.esrs.gov</a>
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\* The yearly plans, identified as required in Sections 4A and 4B, are due by September 15 for the following Federal Fiscal Year.  
 \*\* Reports are to be distributed electronically, along with two (2) hard copies, to the NETL-identified distribution list. Report templates are examples, the Contractor may submit the requested information using their own templates provided the same information is provided. 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 provided. The reports in this checklist apply to the contract in general. The Statement of Work for tasks and subtasks may require other specific reports and/or deliverables.  
 \*\*\* Plan is to be updated annually or as significant changes are identified.

**6. SPECIAL INSTRUCTIONS:**

The forms identified, with a forms number, in the checklist are available at <http://www.netl.doe.gov/business/forms/forms.html>.

## **GENERAL INSTRUCTIONS FOR THE PREPARATION AND SUBMISSION OF REPORTS (MAR 1999)**

The Contractor shall prepare and submit the plans and reports indicated on the "Reporting Requirements Checklist" to the electronic addresses and mailing addresses provided in the NETL-identified Distribution List. The Distribution List will be provided at the post award debriefing with the Contractor. The level of detail the Contractor provides in the plans and reports shall be commensurate with the scope and complexity of the effort and shall be as delineated in the guidelines and instructions contained herein. The prime Contractor shall be responsible for acquiring data from any subcontractors to ensure that data submitted are compatible with the data elements which prime Contractors are required to submit to DOE.

## **MANAGEMENT PLAN (JAN 2000)**

The Management Plan describes the Contractor's approach to performing the effort and producing the products identified in the contractual agreement, and the business management, schedule, cost, and financial management control systems to be used to manage performance.

The outline for the Management Plan and a description of the contents follows:

### **Executive Summary**

The executive summary gives DOE/NETL's management a brief, comprehensive overview of the most important aspects of the Management Plan.

### **Background**

This is a discussion of the background of the project, including the scientific, sociological, legislative, and historical factors, that demonstrates the contractor's understanding of the problems associated with the project.

### **Scope of the Project**

This section gives a brief overview of the project. It should include:

- general description of project objectives;
- task titles and short descriptions;
- participants.

### **Work Breakdown Structure (WBS)**

The Contractor's Work Breakdown Structure (WBS) shall require the written approval of the Contracting Officer's Representative (COR) prior to submission of the first invoice. The WBS submitted by the Contractor shall be in sufficient detail to track all incurred cost and labor hours to their lowest elements. For example, as a minimum, the WBS Structure and dictionary must be capable of breaking down labor cost, travel, materials, supplies, equipment, subcontracts, consultants, and other costs.

- A. WBS Structure Use – The Contractor shall use the WBS structure approved by the COR as the basis for all contractual reporting, invoicing, and accounting;
- B. Changes in WBS – On an annual basis the Contractor shall review their WBS Structure to ensure continued compliance with the work required. If a change is determined to be necessary, the Contractor shall submit a revised WBS for review and approval;
- C. Subcontract WBS – The Contractor shall include the requirements of this clause in all cost-reimbursement subcontracts it issues when:
  - (1) The value of the subcontract is greater than \$250,000, unless specifically waived by the Contracting Officer; or
  - (2) The Contracting Officer determines that the subcontractor effort is, or involves, a critical area related to the contract.

D. Example:

WBS Level 1: Contract Level Reporting

WBS Level 2: Task Level Reporting

WBS Level 3: Subtask Level Reporting (if needed)

WBS Level 4: Activity Level Reporting (if needed)

Further levels as appropriate.

### **Support Systems and Controls**

In this section, the management and administrative system that will be used to control and execute the project will be described. Examples of the systems include: systems and engineering analysis, quality assurance, environmental, safety and health, legal support, ADP support, and accounting support.

### **STATUS REPORT**

The Status Report presents the Contractor's narrative 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 for the near future and the expected impact on task and/or subtask accomplishment. The report is to include a listing of the major products 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.

### **QUALITY ASSURANCE MANAGEMENT PLAN**

A Quality Assurance Management Implementation Plan shall be developed and submitted by the Contractor. The plan shall describe how the Offeror will implement, using a graded approach, QA philosophy, as outlined in DOE O 414.1C, Quality Assurance, and DOE G414.1-2A, Quality Assurance Management System Guide for Use with 10 CFR Part 830, Subpart A, Quality Assurance Requirements, and DOE O 414.1C, Quality Assurance. The plan shall provide (1) a process and graded approach to the integration of the DOE QA ten part criteria (*i.e. program, personnel training and qualifications, quality improvement, documents and records, design, procurement, inspection and acceptance testing, independent assessment*) into its everyday work activities; and (2) a discussion on how the execution of the Offeror's plan will successfully and cost-effectively integrate with NETL's own QA program for on-site work to be conducted. This plan shall be reviewed annually and revised as needed. The DOE quality assurance directives and guidelines can be found at <http://www.directives.doe.gov/>

### **SUBCONTRACT STATUS REPORT INSTRUCTIONS (May 2009)**

#### ***PURPOSE***

The Subcontract Report is to provide NETL management with detailed data relative to the number of Subcontractors within a designated contract. This report will be used by Federal personnel as an information source document and serves as a basis for fulfilling requests received from Headquarters, DOE and other external federal entities.

## **FORM**

An Excel file (NETL Subcontractor Status Report.xls) has been included as a sample template. The following is the suggested format for submission of this report.

## **INSTRUCTIONS**

### **Item    Description**

- 1      Enter inclusive dates of current reporting period.
- 2      Enter the official contract title.
- 3      Enter the official contract number.
- 4      Enter the name and address of each subcontractor. Subcontractors are to be grouped by state.
- 5      Enter ZIP code plus the 4-digit ZIP code extension.
- 6      Enter the subcontractor's business type (i.e. Academia, Industry, National Lab, Non-Profit Organization, State, or Other).
- 7      Enter the subcontractor's business classification (i.e. Small Business, Woman-Owned Small Business, etc).
- 8      Enter the North American Industry Classification System (NAICS) code for the subcontractor listed under Item 4.
- 9      Enter the contract number in combination with CLIN, Sub-CLIN, Task, Sub-Task, or Activity numbers (i.e. 42998.205.01.03), consistent with the contract's Work Breakdown Structure as per the current Management Plan.
- 10     Enter the official title of the CLIN, Sub-CLIN, Task, Sub-Task, or Activity entered in Item 9 above.
- 11     Enter the amount of actual costs incurred in the previous fiscal year.
- 12     Enter the amount of actual costs incurred plus the balance of the planned costs for the current fiscal year.
- 13     Enter the amount of planned costs for the following fiscal year, if any.
- 14     Enter the total cost (actual and balance of plan) for the project identified in Item 9 above.
- 15     Enter the date the subcontractor began work on the project.
- 16     Enter the date the subcontractor completed or the anticipated date the work is to be completed by the subcontractor.
- 17     Enter the name (first and last) of the federal program manager.
- 18     Enter the program number that was used to fund the contract number identified in Item 9.
- 19     Enter a brief description of the project.
- 20     Enter a subtotal for each state.
- 21     Enter a grand total for all states included on the report.

### **Special Instructions:**

This report will be submitted semiannually as follows:

- For the period ending March 30 the due date is April 15.
- For the period ending September 30 the due date is October 15.

For reporting purposes, each State will be listed and subtotaled separately.

For the purpose of this report, the following definitions apply:

CLIN = Contract Line Item Number

DOE = Department of Energy

NAICS = North American Industry Classification System

NETL = National Energy Technology Laboratory

## **COST MANAGEMENT REPORT INSTRUCTIONS (May 2009)**

### ***PURPOSE***

The Cost Management Report provides a monthly status of actual and estimated costs, funding, and plan values, as well as a projection of funds expiration, for each reportable element within a designated contract. This report serves as an accounting, budgeting, and project management tool. Federal personnel will use this report to monitor the funding and cost status of the contract, verify the reasonableness of the contractor's invoices, formulate budgets and calculate award fee pools.

In accordance with the requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act) and related Guidance, each contractor must segregate the obligations and expenditures related to funding under the Recovery Act.

### ***FORM***

An Excel file (CMR-Staffing-Invoice Detail.xls) has been included as a sample template. The following is the suggested format for submission of this report.

### ***INSTRUCTIONS***

#### **Item    Description**

- 1**     Enter the official contract title.
- 2**     Enter the inclusive start and completion dates for the reporting period.
- 3**     Enter the official contract number and, if a modification(s) has occurred, append the latest modification number.
- 4**     Enter the name of the contractor.
- 5**     Enter the date of the contract's current cost plan, which serves as a baseline for this report.
- 6**     Enter the official start date of the original contract.
- 7**     Enter the official completion date as of the latest modification to the contract.
- 8**     Enter the Title, Contract Line Item Number (CLIN), Sub-CLIN, Task, Sub-task, or Activity Numbers, in numerical order, consistent with the contract's Work Breakdown Structure as per the current Management Plan.
- 9**     Enter the current approved plan **revision** for each Element as applicable. Revisions will be tracked by an alpha character added to the end of the Element with "A" designating the first revision.
- 10**    Enter the five-digit "**Fund Code**" identified in Field 1 of the Accounting Flex Field (AFF) provided on the funding source document.
- 11**    Enter the "**Appropriation Year**" from which the funding is provided. This will be the same as Field 2 of the AFF.
- 12**    Enter the six-digit "**Reporting Entity**" identified in Field 4 of the AFF.
- 13**    Enter the five-digit "**Object Class Code**" identified in Field 6 of the AFF.

- 14 Enter the seven-digit “**Program Number**” that is used to fund the Element. This number will correspond to Field 7 of the AFF. If more than one Program number is being used, place the pertinent funding information on separate lines.
- 15 If applicable, enter the seven-digit “**Project Number**” identified in Field 8 of the AFF. A unique seven-digit number will be assigned to funds provided under the Recovery Act.
- 16 If applicable, enter the seven-digit “**Work for Others (WFO)**” number identified in Field 9 of the AFF. A WFO number is a unique designation for NETL customer work.
- 17 If applicable, enter the seven-digit “**Local Use**” number. This number will correspond to Field 10 of the AFF.
- 18 Enter the total amount of funds that have been obligated against the Element in the current fiscal year.
- 19 Enter the total cumulative obligations awarded to the contract as of the close of the reporting period.
- 20 Enter the **Approved FY Cost Plan** value as shown on the most recent authorized cost plan. This will be an estimate of the cost of work planned in the current fiscal year distributed by funding source. Only plan values authorized by the CO shall be recorded in this column.
- 21 Enter the total authorized plan value for the entire performance period of the Element, which may span multiple fiscal years.
- 22 Enter the total actual cost invoiced for the reporting period.
- 23 Enter the total planned cost for the reporting period as shown in the most recent authorized cost plan.
- 24 Enter the total actual cost invoiced as of the close of the reporting period for the current fiscal year.
- 25 Enter the balance remaining of the planned cost for the current fiscal year as shown in the latest approved fiscal year cost plan (Item 20).
- 26 Enter the total actual cost invoiced for the Element from the inception of the contract to the end of the reporting period.
- 27 Enter the total authorized planned costs for the Element from the inception of the contract to the date of the report.
- 28 Enter the “Open Commitments”, defined as any costs *incurred* by the end of the current reporting period but not yet invoiced to NETL.  
  
This would include subcontractor costs incurred but not yet billed to NETL and any award fee earned but not yet invoiced to NETL. Upon completion of the first award fee period estimates for fee shall be based on the average percentage of historic fee earned, not 100% of available award fee. Special consideration should be made to accurately estimate subcontract costs when the prime has not received invoices but is aware that the work has occurred.
- 29 Enter the total planned costs for the next reporting period a shown in the most recent authorized cost plan.
- 30 Enter the “FY Total Cost” which is defined as the costs that the contractor expects to incur during the current fiscal year.  
  
A **contract project manager’s estimate** should be used to project the balance of the year and should include those costs that have been incurred but not invoiced to NETL (open commitments as defined in Item 28).
- 31 Enter the date on which the funds available to the contractor for a specific Element are projected to be fully costed.
- 32 Enter the total of all costs for each column that can be summed. If multiple pages are used, enter the total only on the final page.

- 33 Enter the unit measure for dollar amounts shown (e.g., exact dollars and cents). NETL cost entries are done to the penny. Carry the unit of measure out to decimals (e.g., cents), rounding to two decimal places. Format the cell to round to the dollar so space will be saved. NETL Finance will reformat the appropriate column to two decimals for making cost entries.
- 34 Enter the signature of the responsible contractor Project Manager and the date signed, verifying the validity of the furnished information based upon the Project Manager's knowledge of the contract's current progress and status.
- 35 Enter the signature of the contractor's financial representative and the date signed, verifying the validity of the furnished information based upon the financial representative's knowledge of the contract's current progress and status.
- 36 Enter notes that relate to a reporting elements' financial status. Include modifications received after the closing date of the reporting period but before the actual due date of the CMR.

**Special Instructions:**

Any reference to a fiscal year refers to the Federal Government fiscal year, October 1 through September 30 of the following year.

For the purpose of this report, the term "Element" refers to any reportable CLIN, Sub-CLIN, Task, Sub-task, or Activity.

A new line entry must be inserted anytime one of the following components changes:

1. CLIN/Task Number/Title
2. Fund Code
3. Appropriation Year
4. Reporting Entity
5. Object Class Code
6. Program Number
7. Project Number
8. Work for Others Number
9. Local Use Number

Each Element will be subtotaled. If a Sub-element is associated with an Element, the Sub-element will be totaled and reported at both the Sub- and Element level. For example, an Element with two or more subs would show all of the above information for each sub-Element and rolled up to the Element level.

Any and all breakouts of Sub-CLINs/activities must be received as technical direction, in writing, from the Contracting Officer's Representative (COR) or the Contracting Officer's Technical Representative (COTR).

**INVOICE DETAIL REPORT INSTRUCTIONS (May 2009)**

***PURPOSE***

The Invoice Detail Report provides a monthly status of actual and planned FTE hours worked for each task and a headcount within a designated contract. This report will be used by Federal personnel as an information source and as a project management tool. This report will also serve as the base for the staffing report and will also serve as supporting documentation for the "Public Voucher for Purchases and Services Other Than Personal" (SF 1034). CLIN/Task managers will review the data as part of the invoice approval process.

***INSTRUCTIONS***

**Item**   **Description**

- 1      Enter Contractor’s name and address.
- 2      Enter the contract identification (CID) number.
- 3      Enter the CLIN/Sub-CLIN/Task/Subtask number and title.
- 4      Enter the name and address of the organization for which the services have been provided and is responsible for the payment of the invoice.
- 5      Enter a sequential invoice number as designated by the Contractor.
- 6      Enter the date the invoice was issued.
- 7      Enter the inclusive start and completion dates for the invoice period.
- 8      Enter the employee’s name.
- 9      Enter the labor category title and Exempt (E) or Nonexempt (NE).
- 10     Enter the employee status [full time (FT), part time (PT)].
- 11     Enter the employer name (prime Contractor, subcontractor).
- 12     Enter the employee’s current labor rate.
- 13     Enter the actual hours worked in the reporting period by the employee. The available hours may vary by month depending on weekends, holidays, number of days in month, etc.
- 14     Enter the total labor cost per employee for the period.
- 15     Enter full time equivalent (FTE) actual time worked.
- 16     Enter the FTE labor by site.  
  
Off-site – any location that is not on one of NETL’s sites as defined in “on-site” below.  
  
On-site – Federally-owned or leased property within the defined boundaries of the sites including Pittsburgh, PA; Morgantown, WV (including, in the case of Morgantown, NETL-leased space in the Research Ridge complex immediately adjacent to the boundary); Houston, TX; Fairbanks, AK; Albany, OR; and any future sites.
- 17     Enter the cumulative hours worked to date per employee.
- 18     Enter the previous months costs (can be done by copying the values from “Cumulative Current Cost,” column N on the spreadsheet). This column will be used to calculate the cumulative current cost column .
- 19     The cumulative current cost is the total cost from previous periods plus the cost for the current period.
- 20     Enter the total items of 13 through 19 described above.
- 21     Enter the planned/actual labor hours for the current period.
- 22     Enter the planned/actual labor hours for the cumulative period.
- 23     Other direct costs (ODCs) include those cost other than labor, which are directly related and charged to the CLIN/Sub-CLIN/Task/Sub-Task/Activity.
- 24     Enter a very brief description of the other direct costs.
- 25     Enter the second-tier subcontractor/consultants cost for the period and cumulative to date.
- 26     Enter materials and or supply costs for the period and cumulative to date.
- 27     Enter the travel costs for the period and cumulative to date.
- 28     Enter the training cost for the period and cumulative to date.
- 29     Enter the total of all ODCs

- 30 Enter the General & Administrative (G&A) rate and amount.
- 31 If applicable, enter any award fee being invoiced for the reporting period and cumulative to date amount.
- 32 Enter the total cost being invoiced. This will include Direct Labor, ODCs, G&A and fees.
- 33 Enter the labors costs that were charged to each Program/Project/Local Use combination funding the Task/Subtask/Activity. Enter the total FTEs by Program/Project/Local Use combination for each NETL site. This information is derived in combination with the Cost Management Report (CMR) by using the “total actual cost incurred for the reporting period” – Item 19 on the CMR - and prorating the costs according to the Program Numbers and Reporting Entity elements within each task and applying to the corresponding task, by site location, on the Staffing Report. Example: Task 42998.999.01.01.002 on the CMR is funded with 1720285, and 1610257 Program Numbers from 220221 Reporting Entity. When prorated, the task consists of 89% 1720285 and 11% 1610257 costs. The percentages would then be applied to Task 42998.999.01.01.002 FTEs on the Staffing Report.

**Special Instructions:**

In accordance with the requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act) and related Guidance, each contractor must segregate the obligations and expenditures related to funding under the Recovery Act.

**STAFFING REPORT SUMMARY INSTRUCTIONS (May 2009)**

***Non-Recovery Act Funding***

***PURPOSE***

The Staffing Report Summary is to provide NETL management with data relative to the number of Contractor FTEs (full time equivalents) charged to each funding source within a contract. NETL uses this information in budgeting and planning exercises. In addition, many information requests are received from Headquarters dealing with the location of Contractor employees. This report may be set up so that the detail from the Invoice/Staffing Report will be automatically entered requiring little manual input.

***INSTRUCTIONS***

**Item    Description**

- 1     Enter contractor name and address.
- 2     Enter contract number.
- 3     Enter DOE address.
- 4     Enter inclusive dates of current reporting period.
- 5     Enter contract title.
- 6     FTEs charged to Program Numbers key to NETL’s Institutional Budget will be tracked separately. These Program Numbers will be predetermined on the format given to the Contractor. If changes occur, the Contractor will be notified by E-mail with a new format. Enter the number of FTEs charged against the designated Program Numbers.
- 7     Enter FTEs charged to other institutional Program Numbers that are not key to the budget.
- 8     Enter the collective total of all FTEs charged to the remaining Program Numbers that are not reported in the Institutional Budget.
- 9     Enter the total number of FTEs for each row.

- 10** Enter the FTE labor by site.  
 Off-site – any location that is not on one of NETL’s sites as defined in “on-site” below.  
 On-site – Federally-owned or leased property within the defined boundaries of the sites at Pittsburgh, PA (PGH); Morgantown, WV (MGN); Houston, TX (HOU); Albany, OR (ALB); and Fairbanks, AK (AK); including, in the case of Morgantown, NETL-leased space in the Research Ridge complex immediately adjacent to the boundary.
- 11** Enter the total number of FTEs for each column.
- 12** Enter the headcount of employees working at on and off-site locations as defined in item 10 above.

***American Recovery and Reinvestment Act of 2009 (Recovery Act)***

***PURPOSE***

In accordance with the requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act) and related Guidance, each contractor must segregate the obligations and expenditures related to funding under the Recovery Act.

In addition to the Non-Recovery Act funding “Staffing Report Summary” provided to NETL it will also be necessary to summarize the number of Contractor FTEs (full time equivalents) charged to each funding source within a contract funded by the Recovery Act. NETL uses this information in budgeting and planning exercises. In addition, many information requests are received from Headquarters dealing with the location of Contractor employees. This report may be set up so that the detail from the Invoice/Staffing Report will be automatically entered requiring little manual input.

***INSTRUCTIONS***

**Item   Description**

- 1** Enter contractor name and address.
- 2** Enter contract number.
- 3** Enter DOE address.
- 4** Enter inclusive dates of current reporting period.
- 5** Enter contract title.
- 6** FTEs charged to Program Numbers key to NETL’s Institutional Budget will be tracked separately. These Program Numbers will be predetermined on the format given to the Contractor. If changes occur, the Contractor will be notified by E-mail with a new format. Enter the number of FTEs charged against the designated Program Numbers.
- 7** Enter FTEs charged to other institutional Program Numbers that are not key to the budget.
- 8** Enter the collective total of all FTEs charged to the remaining Program Numbers that are not reported in the Institutional Budget.
- 9** Enter the total number of FTEs for each row.
- 10** Enter the FTE labor by site.  
 Off-site – any location that is not on one of NETL’s sites as defined in “on-site” below.

On-site – Federally-owned or leased property within the defined boundaries of the sites at Pittsburgh, PA (PGH); Morgantown, WV (MGN); Houston, TX (HOU); Albany, OR (ALB); and Fairbanks, AK (AK); including, in the case of Morgantown, NETL-leased space in the Research Ridge complex immediately adjacent to the boundary.

- 11 Enter the total number of FTEs for each column.
- 12 Enter the headcount of employees working at on and off-site locations as defined in item 10 above.

### **CONTRACT ORGANIZATION CHART INSTRUCTIONS (May 2009)**

#### ***BACKGROUND***

The staffing report summary is to provide NETL management with data relative to the number of Contractor FTE's charged to each funding source within a contract. NETL uses this information in budgeting and planning exercises.

The contract organization chart provides a detailed breakdown of the contractor FTE's for the NETL functional areas they are supporting. This report will be used by Federal personnel as an information source and as a project management tool.

#### ***INSTRUCTIONS***

##### **Item    Description**

- 1 Enter the submission date of the report.
- 2 Enter source document used for obtaining the data (i.e. June 2010 Invoice/Staffing Data).
- 3 Enter the name of the individual authorized to submit the report.
- 4 Enter the contract number (i.e. DE-NT0005432).
- 5 Enter the current NETL organizational code. SSC organization data must match the current NETL Organizational Chart (by division, etc.). Use current NETL codes 120, 300, 311, etc. assigned to each NETL unit. A NETL codes tab with current information is included with the Excel template.
- 6 Enter the current NETL organization title. A worksheet tab with current information has been included in the template. Copy the formula down the column and the title should automatically be entered.
- 7 Enter Labor category examples: Scientist 4, Secretary 1, etc.
- 8 Enter the employee's name – use full last name.
- 9 Enter the first initial of the employee. For employees with identical last names and first initial, use the second letter of the first name. If an employee has multiple contractor roles, use the first two initials for the first name. Do NOT use all capitals.

Examples: Doe, J.  
Doe, Ja.

- 10 Enter the major contract (i.e. ESPA, RES, etc).
- 11 Enter the assigned company code. Select the company key tab on the template. This list should be updated as required using the following format.  
  
The company numbering code will consist of three (3) alpha characters and up to two (2) numerals.
- 12 Enter the FTE allocation. FTE percentage charged to the specific NETL division. Use two (2) decimal places. Employee should only be listed once for each NETL division.

- 13** Enter the FYXX Fully Loaded Labor rate estimated cost projected on the FYXX work (cost) plans. This is to be prorate according to data in FTE Allocation column.
- NOTE: fully loaded labor rate cost is defined as the base hourly rate plus fringe benefits.
- 14** Enter the work location using the following alpha codes:
- A = Albany, OR
  - AK = Alaska
  - H = Houston, TX
  - M = Morgantown, WV
  - P = Pittsburgh, PA
  - R = Research Ridge
  - O = Offsite (Example: Denver, CO, Oak Ridge, TN, Washington, DC, etc.)
- 15** No input by the contractor is required for these columns. A formula has been provided to populate the columns based on the location code entered in the "Location" column. The only action required is to copy the formula provided down the columns for each additional row of information.
- 16** Enter additional comments as needed.
- 17** No input required. A formula has been entered to total the FTE's for each individual location column (i.e., Albany, Alaska, Pittsburgh, etc.). In addition, a grand total of locations

#### ***SUPPLEMENTAL INSTRUCTIONS***

- This report shall be submitted semiannually as follows:
  - For the period ending June 30 the due date is July 15. The data for this report will be obtained from the June invoice.
  - For the period ending December 30 the due date is January 15. The data for this report will be obtained from the December invoice.
- Verify data:
  - Is information valid?
  - Eliminate positions that are duplicates.
  - Employee has not been separated or on extended leave.
  - Check spelling.
- Check that the formula is valid especially if it was necessary to insert addition rows.
- List all direct labor **FTE's**. Enter number of FTE's charged against a specific NETL number. If the FTE is split between NETL divisions, a separately entry will be made for each division. Be sure the employee's time totals to the correct FTE allocation.
- **DO** list vacancies.
- **DO** submit data for an employee on extended leave.

#### ***AVOID***

- Avoid duplicates
- An employee should only be listed once per NETL Code #.
- An employee can not be more than 1 FTE

#### **HOT LINE REPORT (MAR 2002)**

The "Hot Line" Report may be used to report a major breakthrough in research, development, or design; an event causing a significant schedule slippage or cost overrun; an environmental, safety and health violation; achievement of or failure to achieve an important objective; or any requirement for quickly documented direction or redirection. The report shall be submitted by the most rapid means available, usually electronic, and should confirm telephone

conversations with DOE representatives. Identification as a "Hot Line Report" serves notice at each link in the delivery chain that expedition in handling is required. Unless otherwise agreed by the parties involved, DOE is expected to take action and respond in a similarly timely manner. The report should include:

1. Contractor's name and address;
2. Contract title and number;
3. Date;
4. Brief statement of problem or event;
5. Anticipated impacts; and
6. Corrective action taken or recommended.

Hot line reports shall document the incidents listed below:

1. Any single fatality or injuries requiring hospitalization of five or more individuals is to be immediately reported.
2. Any significant environmental permit violation is to be reported as soon as possible, but within 24 hours of the discovery of the incident.
3. Other incidents that have the potential for high visibility in the media are to be reported as quickly as possible, but within 24 hours following discovery.
4. Any failure resulting in damage to Government-owned equipment in excess of \$50,000 is to be reported as quickly as possible, but within 24 hours of the discovery of the failure.
5. Any unplanned event which is anticipated to cause a schedule slippage or cost increase significant to the project is to be reported within 24 hours.
6. Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported.
7. Any accidental spill or release which is in violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported, but within 24 hours of the discovery of the accident.
8. Any incident which causes a significant process or hazard control system failure, or is indicative of one which may lead to any of the above defined incidents, is to be reported as soon as possible, but within 5 days of discovery.

The requirement to submit Hot Line Reports for the incidents identified in 1, 2, 3, 6, or 7 is for the sole purpose of enabling DOE officials to respond to questions relating to such events from the media and other public.

When an incident is reported in accordance with 4, 5, 6, 7, or 8, the Contractor shall conduct an investigation of its cause and make an assessment of the adequacy of resultant action. A written report is required no later than ten (10) calendar days following the incident and shall include an analysis of the pertinent facts regarding the cause, and a schedule of the remedial events and time periods necessary to correct the action.

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, and coordinated with NETL's Office of Public Affairs, the Contracting Officer Representative (COR) and the Contracting Officer.

### **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 the

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 H27 ENVIRONMENTAL, SAFETY, AND HEALTH-ON-SITE SERVICE CONTRACTS is to be reported within 3 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 NETL’s Public Relations Officer and coordinated with the COR.

**DOE/NETL ES&H REPORTS (DOE O 231.1, M 231.1-1, O 232.1)**

- A. The Contractor shall provide information and reports to NETL in support of DOE’s reporting requirements contained in DOE O 231.1, ENVIRONMENTAL, SAFETY, AND HEALTH REPORTING, DOE M 231.1-1, ENVIRONMENTAL, SAFETY, AND HEALTH REPORTING MANUAL, and DOE O 231.1, 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 and NETL ES&H performance indicator data
  11. Annual site environmental reports
  12. Annual tabulation of ES&H and quality-related assessments conducted.
- 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 10 days of the associated accident and/or incident.
- D. On a quarterly basis, the Contractor shall report on the following NETL 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. OSHA Cost Index (estimated cost of workplace-related injuries and illnesses)
  4. Hazardous Waste Generated (total cubic feet of hazardous waste shipped)
  5. Metrics and reporting information cited in the Contractor Integrated Safety Management (ISM) Plan

### **INTEGRATED SAFETY MANAGEMENT PLAN**

An Integrated Safety Management (ISM) 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, and Integrated Safety Management System Guide, DOE G 450.4-1, Volumes 1 and 2, into the planning, budgeting, executive, and assessment of work activities. The plan shall provide (1) a process approach to the integration of ISM's five steps (*i.e., defining the scope of work, analyzing the hazards, developing and implementing controls, performing work safely, and ensuring performance*) into its everyday work activities; (2) a specific management approach to demonstrate ISM's seven guiding principles (*i.e., workforce responsibility and accountability; clear roles, responsibilities and authorities; competence commensurate with responsibilities; balance priorities; identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization*); and (3) a discussion on how the execution of the Offeror's plan will successfully and cost-effectively integrate with NETL's own ISM and ES&H programs for on-site work to be conducted. An annual updated is also required.

### **PROPERTY REPORTS (JAN 2000)**

The NETL Property Handbook entitled "Management of Government Property in the Possession of Contractors," contains forms, instructions, and suggested formats for submission of property reports. This handbook can be found at <http://www.netl.doe.gov/business/property/980576e.pdf>.

### **REPORT OF CONTRACTOR'S PROPERTY MANAGEMENT SYSTEM (JAN 2000)**

This report shall consist of the Contractor's comprehensive written property management system and is due within 6 months of the contract award date. It shall address the Contractor's written system for controlling, protecting, preserving and maintaining all Government property. The report format shall be consistent with Contractor's system and shall as a minimum enable comprehensive evaluation by the Government. (If not provided in your local format, see sample in the NETL Property Handbook).

### **ANNUAL REPORT OF PROPERTY IN THE CUSTODY OF CONTRACTORS (NETL F 580.1-8) (JAN 2000)**

This report includes **ALL** Government-owned Contractor-acquired and Government-furnished property and materials for which the contractor is accountable to the Government. This report shall also include Government Property at subcontractor's plants and alternate locations. This report is submitted on NETL F 580.1-8 for the period ending September 30 and is due by October 15.

### **HIGH RISK PROPERTY REPORT (NETL F 580.1-25) (SEPT 2000)**

Some property, because of its peculiar nature, its potential impact on public health and safety, on the environment, on security interests, or on proliferation concerns, must be handled, controlled, cleared and disposed of in other than the standard manner. High-risk property includes property which is: 1) nuclear-related; 2) proliferation-sensitive or export controlled; 3) chemically, biologically, or radiologically contaminated; 4) national security/military interests; and 5) hazardous materials and wastes. Further definitions of high-risk property can be found at <http://www.management.energy.gov/documents/pp1970-3.pdf>. This report is required by the DOE for the control (acquisition, management and disposal) of high risk property to ensure that such disposition does not adversely affect public safety and/or the environment, national security, or nuclear nonproliferation objectives of the United States. This report shall be submitted for the period ending September 30 and is due by October 15 of each year.

### **REPORT OF PHYSICAL INVENTORY OF CAPITAL EQUIPMENT (OCT 2004)**

Capital equipment is any piece of personal property, equipment, or furniture with a useful service life of 2 years or more and is acquired at a unit cost of \$50,000 or more. The suggested format for this report can be found in the NETL Property Handbook at <http://www.netl.doe.gov/business/property/980576e.pdf>. This report is due 2 years from award date and every 2 years thereafter.

### **REPORT OF PHYSICAL INVENTORY OF SENSITIVE ITEMS (OCT 2004)**

Sensitive items are identified as small calculators, tape recorders, radios, photographic and projection equipment, typewriters and other office machines, firearms, survey instruments, binoculars, power tools, personal computers, printers, external modems, or other equipment, which because of its general use characteristics and ease of transport are particularly susceptible to misappropriation or theft. These items will usually have an acquisition cost of less than \$50,000. The suggested format for this report can be found in the NETL Property Handbook at <http://www.netl.doe.gov/business/property/980576e.pdf>. This report shall be submitted for the period ending September 30 and is due by October 15 of each year.

### **REPORT OF TERMINATION OR COMPLETION INVENTORY (SF-1428 AND SF-120) (MAR 1999)**

This report submitted on the SF-1428 and SF-120 is due immediately upon completion or termination of the contract. The contractor is required to perform and cause each subcontractor to perform a physical inventory,

adequate for disposal purposes, of all Government property applicable to the contract.

### **EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE REPORT**

The contractor's demonstrated compliance with the rules, regulations and policies of the EEO laws, DOE EEO directives (DOE 311.1B) NETL EEO directions (orders, operating plans, and procedures) and other requirements pursuant to the Energy Policy Act of 2005, Public Law 109-58, enacted August 8, 2008.

The compliance report shall address the following areas:

1. Provide information and data analysis on contractor workplace by EEO categories (Blacks, Hispanics, Women, etc.) versus the Civilian Labor Force Index (CLF) for each category.
2. The number of EEO complaints file during the year. The required data should include information on the basis for the complaint and complaint disposition. The basis should include complaints with specific categories such as age, religion, color, natural origin, sexual orientation, race, gender, etc.
3. Provide information on disciplinary actions and their disposition. Disciplinary actions should be grouped into three categories: (1) verbal/written actions; (2) suspensions; and (3) terminations. All data should be grouped by race and gender.
4. Summary of outreach efforts to attract women and minorities for employment and the result of such efforts.
5. Description of programs or efforts to retain women and minorities in their workplace.

Description and number of hours of EEO/Diversity training provided to employees.

**J.5 ATTACHMENT B-1 – COST MANAGEMENT/INVOICE DETAIL/SUMMARY STAFFING REPORT FORMS**

The Cost Management/Invoice Detail/Summary Staffing Report Forms are provided as a separate attachment entitled “**0000332-CMR-Staffing-Invoice.xls**”.

**J.6 ATTACHMENT B-2 – CONTRACT ORGANIZATION CHART**

The Contract Organization Chart Forms are provided as a separate attachment entitled “**0000332-Org-Chart.xls**”.

**J.7 ATTACHMENT B-3 – SUBCONTRACT STATUS REPORT**

The Subcontract Status Report Forms are provided as a separate attachment entitled “**0000332-Subcontract Status Report.xls**”.

## **J.8 ATTACHMENT C - PERFORMANCE EVALUATION PLAN**

### **Part I. INTRODUCTION**

- A. This PEP covers the administration for the award fee provisions of this contract for the National Energy Technology Laboratory (NETL) and provides the standardization necessary to ensure effective development, administration, and coordination of the evaluation process. It is intended as a means to:
1. Document how performance during a specific award fee period will be evaluated and fee determined.
  2. Assure that the Contractor's performance is objectively evaluated in a fair and consistent manner.
  3. Afford the Contractor an opportunity to earn fee commensurate with performance expended against performance expectations and standards.
- B. The following matters, among others, are covered in the contract:
1. The Contractor is required to provide services as identified in the Statement of Work located in Section J, Attachment A-2, of the contract.
  2. Cost-Plus-Award-Fee task orders will be issued to provide an incentive and to encourage and reward the Contractor for increasing efficiency in the performance of the contract.
  3. The term of the contract shall not exceed 60 months from its effective date including all option years.
  4. The estimated cost of performing this contract, including all option years, is described in Section B of the contract.
  5. The award fee pool is detailed in Section B of the contract.
  6. The estimated cost and award fee pool are subject to equitable adjustments as a result of changes in the scope of the contract and in accordance with the special contract requirements in Section H of the contract.
  7. The award fee earned and payable will be determined unilaterally by the Fee Determination Official (FDO) in accordance with the terms of this contract.
  8. The Government may unilaterally make changes to this plan provided the Contractor receives notice of the change at least 15 calendar days prior to the beginning of the evaluation period to which the changes apply.
  9. Fee evaluation periods will be in accordance with contract clause B.8, Distribution of Performance Award Fee.

### **Part II. ORGANIZATIONAL STRUCTURE FOR AWARD FEE ADMINISTRATION**

- A. The following organizational structure is established for administering the award fee provisions of the contract. This structure is subject to change at the discretion of the Government.
1. Fee Determination Official
    - a. The FDO is the Director of NETL and the Head of Contracting Activity.
    - b. The primary responsibilities of the FDO include the following:
      - (1) The FDO will determine the amount of award fee earned during each period. The amount determined will not result solely from mathematical summing, averaging, or the application of a formula. The FDO's determination of the amount of the award fee earned and the basis for this determination will be stated in the Award Fee Determination letter to the Contracting Officer.
      - (2) The FDO authorizes changes to this plan.
  2. Performance Evaluation Board (PEB)
    - a. PEB Chair and Membership: The PEB Chair will be the Deputy Office Director for the Office of Institutional and Business Operations or his designee. The PEB membership will consist of the Contracting Officer, Contracting Officer's Representative (COR), and the Site-Support Contract Coordinator. The Government may change the chairman and membership without advance notice to the Contractor. PEB members are responsible for reviewing all data submitted by the Performance Raters (PRs) and providing a quality assurance review of the entire award fee package prior to submittal to the FDO.
    - b. Performance Raters: The PRs will be the Task CORs. They will be responsible for evaluating and assessing the Contractor's activities throughout the evaluation period and documenting the results at the end of the period. The PRs will be responsible for gathering information and objective evidence in

order to evaluate the management effectiveness of the Contractor, and recommending a management effectiveness score to the PEB. They will coordinate with the necessary personnel to develop the performance scores and supporting documentation. The PRs will discuss and review progress with the Contractor throughout the evaluation period. The Government may change the PRs without advance notice to the Contractor.

**Part III. EVALUATION OF THE CONTRACTOR'S PERFORMANCE**

**A. Rating Plan**

1. The Contractor's performance shall be evaluated and rated according to this PEP. Supporting documents are attached:
  - a. Exhibit E-1, Performance Areas, Evaluation Criteria, and Scoring
  - b. Exhibit E-2, Performance Measures and Levels of Performance for Performance Area 1, Task Performance
  - c. Exhibit E-3, Award Fee Conversion Chart
2. Exhibit E-3 is a basis for translating the task performance scores to an award fee percentage for arriving at a recommendation for the FDO's consideration regarding the amount of award fee earned. In no way does this imply mathematical precision or a requirement that the FDO accept this recommendation as a determination of the amount of award fee earned for the Contractor's performance during a rating period.

**B. Award Fee Determination Process**

1. Presented below are process steps that will be followed to evaluate and determine the award fee due the Contractor, based on performance:
  - a. No later than 35 calendar days after the end of the evaluation period, the PEB Chair and COR will present the draft evaluation findings to the Contractor.
  - b. The Contractor will be given an opportunity to submit comments to the PEB on the draft evaluation findings within 5 calendar days of receipt.
  - c. The FDO provides written notification of the final fee determination to the PEB Chair, Contracting Officer, and COR.
  - d. The CO provides the final fee determination to the Contractor.
  - e. The Contractor prepares a separate (*i.e., apart from the regular monthly invoice*) voucher(s) based on the FDO's fee notice and submits this invoice to the Government for payment of its award fee.

**EXHIBIT E-1. PERFORMANCE AREAS, EVALUATION CRITERIA, AND SCORING**

<b>Performance Area</b>	<b>General Evaluation Criteria</b>	<b>Performance Area Weight</b>
1	Task Performance	75%
2	Management Effectiveness	25%
	<b>TOTAL</b>	<b>100%</b>

**1. PERFORMANCE AREA 1: TASK PERFORMANCE (75%)**

**Objective**

The objective of Performance Area 1, Task Performance, is to validate the Contractor’s performance of the tasks outlined in the task statements of work. Each task of the contract will be assessed individually based on the following performance measures: (1) quality of work products, (2) quality of work processes, (3) schedule, and (4) cost control. A description of these measures can be found in Exhibit E.2.

**Performance Measures and Expectations**

Each task will have specific performance expectations that fall under one of the four performance measures listed in the paragraph above. These expectations, along with specific levels of performance, will be documented in the task

statements of work. Tasks may have multiple performance expectations under one or more of the measures, or no expectations under one or more of the measures. The only requirement is that all tasks will have a cost control expectation. Each performance expectation will be assigned a weight to communicate its level of importance. The weights for each task will sum to 100%. An example of the distribution of weights is shown in the following table.

<b>Task 1 Performance Expectations</b>	<b>Weight</b>
Quality of Work Products Expectation	40%
Quality of Work Process Expectation	15%
Schedule Expectation	20%
Cost Control Expectation	25%
<b>TOTAL</b>	<b>100%</b>

The Contractor will be evaluated on objective evidence demonstrating performance for each of the task performance expectations. During each evaluation period, the performance expectations will be scored based on the evidence received. The allowable scores, with a general description of the associated level of performance, are contained in Exhibit E.2. Specific levels of performance for each performance expectation are located in the task statements of work.

**Generation of Task Performance Score**

Scores will be assigned to each performance expectation based on the level of performance prescribed in the task statements of work. A single score for Performance Area 1 will be generated for each task using the following calculations:

- (1) Performance expectation weight \* score = weighted score
- (2) Add all weighted scores

An example is shown in the following table.

<b>Task 1 Performance Expectations</b>	<b>Weight</b>	<b>* Score</b>	<b>= Weighted Score</b>
Quality of Work Products Expectation	40%	4.0	1.600
Quality of Work Process Expectation	15%	3.5	.525
Schedule Expectation	20%	3.5	.700
Cost Control Expectation	25%	3.5	.875
<b>TOTAL</b>	<b>100%</b>		<b>3.700</b>

The total weighted score for each task will be used to calculate a total task score as discussed in the Determining Award Fee Earned section.

**2. PERFORMANCE AREA 2: MANAGEMENT EFFECTIVENESS (25%)**

**Objective**

The objective of Performance Area 2, Management Effectiveness, is to validate the Contractor’s performance of the specific management functions identified in the following evaluation factors. These functions are essential to effectively and efficiently manage the contract.

**Performance Evaluation Factors**

The Management Effectiveness performance area will be evaluated by the PEB Chair or appointee. Input will be

provided to the PEB Chair or appointee by the CO, Contract COR and PRs. The evaluation will be based on the Contractor’s demonstrated ability to manage the following evaluation factors:

1. **PROBLEM RESOLUTION.** Proactively identifies potential problems and promptly corrects or eliminates undesirable conditions. When reacting to a problem identified outside the contract, the issue is addressed quickly and responses are well thought out. Resolutions are shared with the appropriate individuals in a timely manner. This factor includes the evaluation of alternative methods, processes, or procedures to accomplish overall requirements within the planned schedule and budget.
2. **COORDINATION/COMMUNICATION.** Effectively coordinates on-site and off-site support of the contract work tasks, including principal subcontractors and vendors. Effectively communicates with other site support contractors, DOE employees and management, and union officials to promote successful completion of work tasks. This factor includes coordination and cooperation with third party NETL support contractors who do not have a contractual relationship with the Contractor.
3. **INNOVATION.** Uses innovation to recommend actions or plans for DOE approval which substantially increase the value of support services through cost reduction/efficiencies and/or improvement of results.
4. **FINANCIAL AND MANAGEMENT REPORTING.** Provides accurate and timely cost data, contractual reports, invoices, plans, and proposals per the contract’s terms and conditions.
5. **PROJECT MANAGEMENT.** Plans, organizes, and manages resources to bring about the successful completion of Government-approved project goals and objectives. Demonstrates the ability to manage multiple concurrent projects. Reports the impacts of a project change on all other active and planned projects. There are no changes or deviations to approved project plans without COR approval.
6. **CONTRACT ADMINISTRATION.** Complies with the contract’s terms and conditions affecting the contract (*e.g., cost, EEO, issuance of limitation-of-cost letters on a task basis*). Submits accurate and timely required reports (*e.g., cost management report, staffing report, proposal submissions, subcontract consent documentation, property reports*). Responsive to requests for change proposals and project plans. Submits timely, complete proposals and is cooperative in negotiating changes.
7. **COST EFFECTIVENESS.** Develops and implements practices and processes resulting in cost efficiencies.
8. **MANPOWER MANAGEMENT.** Manages direct and indirect labor and other costs as identified in the authorized plans to successfully complete work tasks. The demonstrated ability to manage the Contractor labor pool such that the proper skill mix is available to identify and address requirements; the labor pool is fully occupied and engaged; and labor and other direct costs are managed as identified in the tasks’ authorized plans.
9. **Environmental Safety & Health.** The Contractor’s ability to:
  - a. Comply with contractually-identified Federal, State, and local ES&H requirements and NETL’s ES&H directives.
  - b. Develop, implement, and maintain an Integrated Safety Management (ISM) plan.
  - c. Apply ISM’s seven principles and five functions in the planning, budgeting, execution, and improvement of its management and work activities.
  - d. Support NETL’s ES&H objective and targets.
  - e. Support NETL’s ISO 14001 and OHSAS 18001 certifications.
10. **RISK MANAGEMENT.** The demonstrated ability to ensure risk is managed such that services provided, managed, and supported are reliable, their availability is maximized, and their performance is optimized.

**Generation of Management Effectiveness Performance Score**

A performance score will be assigned based on the breadth and depth of the objective evidence obtained. This score will represent performance at the contract level, related to all evaluation factors described above. The following table addresses the performance expectation and the level of performance needed to achieve each score.

Performance Expectation	Level of Performance and Score
-------------------------	--------------------------------

Outstanding demonstration, through objective evidence, of the management effectiveness performance evaluation factors	Outstanding demonstration	4.0
	Excellent demonstration	3.5
	Good demonstration	3.0
	Marginal demonstration	2.5
	Unacceptable demonstration	0

The performance score will be used to calculate a total task score as discussed in the Determining Award Fee Earned section.

### 3. DETERMINING AWARD FEE EARNED

Each task will have an individually-assigned score for Performance Area 1. The contract-level score assigned for Performance Area 2 will be applied to each task for a total of two scores for each task.

These two scores will be weighted according to the weight distributions identified in this document, that is, Performance Area 1: 75%; and Performance Area 2: 25%. The two weighted scores added together results in a total task performance score. The calculation steps are as follows. Example scores are used in the table to provide clarity.

- (1) Performance area score \* performance area weight = weighted task score
- (2) Add all weighted task scores

Performance Area	Assigned Score	Performance Area Weight	Weighted Task Score
Performance Area 1, Task Performance	3.70	75%	2.7750
Performance Area 2, Management Effectiveness	3.00	25%	0.7500
<b>TASK 1 TOTAL PERFORMANCE SCORE</b>			<b>3.5250</b>

Each task's total performance score will be rounded down to the nearest tenth. This rounded-down score will be applied to the Award Fee Conversion Chart in Exhibit E-3 to determine the amount of available award fee earned by the Contractor for each task. This amount will be used in the PEB's recommendation to the FDO for consideration in determining the final award fee earned.

#### EXHIBIT E-2. PERFORMANCE MEASURES AND LEVELS OF PERFORMANCE FOR PERFORMANCE AREA 1, TASK PERFORMANCE

Specific performance expectations and levels of performance are contained in the task statements of work. All of the expectations will fall under one of the four general performance measures listed below.

Performance Measure	Performance Measure Definition	Level of Performance	Score
Quality of Work Products	DOE will assess the degree to which work products are accurate, complete, and relevant with regard to DOE requests; professional in appearance and format; and accepted by DOE without revision.	Work products are (1) always accurate, complete, relevant, and professional, and are (2) always accepted without revision.	4 Outstanding
		Work products are (1) consistently accurate, complete, relevant, and professional, and are (2) consistently accepted without revision.	3.5 Excellent
		Work products are (1) mostly accurate, complete, relevant, and professional, and are (2) mostly accepted without revision.	3 Good

Performance Measure	Performance Measure Definition	Level of Performance	Score
		Work products are (1) usually accurate, complete, relevant, and professional, and are (2) usually accepted without significant revision being required.	2.5 Marginal
		Work products are (1) seldom accurate, complete, relevant, and professional, and are (2) seldom accepted without significant revision being required.	0 Unacceptable
<b>Quality of Work Processes</b>	DOE will evaluate the degree to which the Contractor executes work processes in adherence to, and in compliance with, prescribed procedures, and requires no intervention from the Government.	Work processes are (1) always executed according to prescribed procedures, and (2) require no intervention from the Government.	4 Outstanding
		Work processes are (1) consistently executed according to prescribed procedures, and (2) require no intervention from the Government.	3.5 Excellent
		Work processes are (1) mostly executed according to prescribed procedures, and (2) require minimal intervention from the Government.	3 Good
		Work processes are (1) usually executed according to prescribed procedures, and (2) require some intervention from the Government.	2.5 Marginal
		Work processes are (1) seldom executed according to prescribed procedures, and (2) require a lot of intervention from the Government.	0 Unacceptable
<b>Schedule</b>	DOE will assess the timeliness of deliverables, completion of milestones, and responsiveness to DOE requests, or range of schedule variance.	Milestones, deliverables, and DOE requests are always completed ahead of schedule.	4 Outstanding
		Milestones, deliverables, and DOE requests are always completed according to schedule.	3.5 Excellent
		Milestones, deliverables, and DOE requests are mostly completed on time, or schedule variance is mostly zero or mostly a positive number.	3 Good
		Milestones, deliverables, and DOE requests are usually completed on time, or schedule variance is usually zero or usually a positive number.	2.5 Marginal
		Milestones, deliverables, and DOE requests are seldom completed on time, or schedule variance is seldom zero or seldom a positive number.	0 Unacceptable
<b>Cost Control</b>  Cost efficiencies and circumstances beyond the control of the contractor will be	Actual task costs have minimal to no variance from approved plan (calculated variance will be rounded down to the nearest tenth).  Cost control measures are	Actual costs are within 2% of the approved cost plan AND the contractor submits no updated cost plans unless there is a change in scope AND the quality ratings (products and processes) in the PEP achieved an excellent score (3.5 or higher). The evaluator may also take into consideration cost efficiencies that were documented and confirmed in scoring an outstanding.	4 Outstanding

Performance Measure	Performance Measure Definition	Level of Performance	Score
taken into consideration and scores will be adjusted accordingly.	documented and include a description of the action taken as well as actual dollar amount saved to date and projected savings.	Actual costs are within 5% of the approved cost plan AND the contractor submits no updated cost plans unless there is a change in scope AND the quality ratings (products and processes) in the PEP achieved a good score (3 or higher).	3.5 Excellent
		Actual costs are within 10% of the approved cost plan AND the contractor submits no more than one updated cost plan that is not related to a change in scope AND the quality ratings (products and processes) in the PEP achieved a good score (3 or higher).	3 Good
		Actual costs are within 10% of the approved cost plan AND the contractor submits no more than two updated cost plans that are not related to a change in scope.	2.5 Marginal
		Actual costs are not within 10% of the approved cost plan AND the contractor fails to adhere to the contract requirement for adjusting their cost plan when expected to be more than + or - 10% OR the contractor submitted more than 2 revisions to the cost plans that are not related to a change in scope.	0 Unacceptable

**EXHIBIT E-3. AWARD FEE CONVERSION CHART**

The following chart is for use in converting weighted performance scores into percentages of available award fee earned. Scores will be rounded down to the nearest tenth before identifying the percent of available award fee earned.

<b>TASK PERFORMANCE SCORE</b>	<b>PERCENT OF AVAILABLE AWARD FEE EARNED</b>
4.0	100
3.9	98
3.8	96
3.7	94
3.6	92
3.5	90
3.4	89
3.3	88
3.2	87
3.1	86
3.0	85
2.9	74
2.8	63
2.7	52
2.6	41
2.5	30
0-2.4	0

**J.9 ATTACHMENT D - POSITION QUALIFICATIONS**

CATEGORY	DESCRIPTION
Program Manager	<p>[REDACTED]</p> <p>(1) [REDACTED]</p> <p>(2) [REDACTED]</p>
Assistant Program Manager	<p>As a minimum, the Offeror's Assistant Program Manager must demonstrate or shall have:</p> <p>(1) [REDACTED]</p> <p>(2) [REDACTED]</p>
General Clerk I	[REDACTED]
General Clerk II	[REDACTED]
General Clerk III	[REDACTED]
Secretary I	[REDACTED]
Secretary II	[REDACTED]
Secretary III	[REDACTED]
Accounting Clerk I	[REDACTED]

Accounting Clerk II	[REDACTED]
Accounting Clerk III	[REDACTED]
Library Technician	[REDACTED]
Librarian II	[REDACTED]
Word Processor II	[REDACTED]
Data Entry Operator II	[REDACTED]
Travel Clerk I	[REDACTED]
Travel Clerk II	[REDACTED]
Video Teleconference Technician	[REDACTED]
Engineering Technician VI	[REDACTED]

**J.10 ATTACHMENT E – WAGE DETERMINATIONS/COLLECTIVE BARGAINING AGREEMENTS**

The wage determinations and collective bargaining agreements are provided in a separate file attachment entitled **“0000332-WD-CBA Rev1.PDF”**

**WV – 2005-2573 – Rev 8 – 7/22/2009**

**PA – 2005-2451 – Rev 8 – 5/26/2009**

**OR – 2005-2439 – Rev 8 – 5/26/2009**

**OK – 2005-2433 – Rev 7 – 5/26/2009**

**TX – 2005-2515 – Rev 10 – 7/22/2009**

**J.11 ATTACHMENT F – PERFORMANCE GUARANTEE AGREEMENT**

The Performance Guarantee Agreement is provided in a separate file attachment entitled **“0004006-Performance Guarantee.PDF”**