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## **Section B - Supplies or Services/Prices**

### **B.1 SERVICES TO BE ACQUIRED – Mission Execution and Strategic Analysis (MESA)**

- A. The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of the items of work as specified in the Performance Work Statement (PWS) set forth in Part III, Section J, Attachment A-2 for the period of performance of the contract as specified in Part I, Section F (also referred to as “contract period,” “term of the contract,” or “contract term”), and fulfill the other requirements of the contract including contract reporting set forth in Part III, Section J. It is expected that some performance will be conducted at shared facilities provided by the Contractor.
- B. The level of effort specified for the base period is the present level of effort **estimated** for the performance of work set forth in Part III, Section J, Attachment A-2, PWS. However, changes in programmatic requirements may cause a substantial increase or decrease in the number of Direct Productive Labor Hours (DPLH) identified for the Contract Line Item Numbers (CLIN) listed in Part I, Section B. This contract is to be available for the Government to obtain services for the contract period, even if the level of effort therefore and/or the estimated cost as originally specified is insufficient. The estimated level of effort, as may be approved by the Contracting Officer in accordance with this contract, is inclusive of all effort for the prime, subcontractor(s), consultant(s), or other such entities that provide labor under this contract. The estimated DPLH is identified below for each CLIN. The Total Estimated Cost identified below is inclusive of all items (e.g. labor, supplies, materials, subcontracts, etc.).
- C. All work under this contract shall be performed under the general guidance and direction of the DOE Contracting Officer’s Representative (COR) and Contracting Officer’s Technical Representative (COTR) whose responsibilities are set forth in the clause Technical Direction in Part I Section H. Such guidance and direction shall not, however, effect any change in the Contract Schedule, PWS, Contract Reporting Requirements, or other provisions of this contract. Such changes shall only be made by the expressed written direction of the Contracting Officer.
- D. The PWS set forth in Part III, Section J, Attachment A-2, defines the scope of work that can be completed under any and all of the CLINs listed below.

### **Base Period**

#### **CLIN 1 (Mission Execution)**

The services to be delivered under this CLIN shall support effective and efficient execution of programs and projects at the U.S. Department of Energy’s (DOE) National Energy Technology Laboratory (NETL). A *program* is an organized set of ongoing activities directed toward a common purpose or goal undertaken in support of an assigned mission area. Typically, a program is a group or portfolio of related projects, managed in a coordinated way to accomplish broad goals over some period of time to which individual *projects* contribute. Depending on the Technology Readiness Level (TRL) of a given technology, the associated timeline to develop technology from laboratory scale study to a pilot or full scale demonstration level may range from three to five years upwards to ten to fifteen years. Requirements, governing regulations, internal and external stakeholders, implementation strategies, and many other factors that influence NETL’s mission vary among the research programs, thus affecting the time required for conducting qualified demonstrations. Research program initiatives are national in scope and emphasize partnerships with private industry, academia, state governments, not-for-profits, and other stakeholders to advance the knowledge base and develop technological solutions to national energy and environmental problems.

Activities for this CLIN focus on program initiatives and the project portfolios under the direction of the NETL Office [refer to NETL Organization in Section J.2 Attachment A-1 below] that supports the sponsoring organization. These Offices perform program and project management for sponsoring organizations which include, but are not limited to, the DOE’s Offices of Fossil Energy (FE), Energy Efficiency and Renewable Energy (EERE), and Electricity Delivery and Energy Reliability (OE).



This CLIN supports the following functional areas:

- Program and Project Implementation
- Systems and Databases
- Assessments/Reviews/Evaluations
- Technical Information

Base Period – <b>Estimated DPLH - [TBD]</b>	Effective date through 36 Months
Total Estimated Cost	[\$TBD]
Maximum Award Fee Pool	[\$TBD]
Total Estimated Cost Plus Maximum Award Fee	[\$TBD]

**CLIN 2 (Strategic Analysis)**

This CLIN supports the management and execution of analyses to include an interdisciplinary personnel mix having technical expertise in scientific, engineering, economic, business, and policy disciplines needed for in-depth understanding and analysis of the energy-economic system of the United States, conventional and advanced energy technologies, and energy-related regulatory, legislative, and policy issues. The funding for the activities under this CLIN would come from various sources, such as, but not limited to, the DOE offices of FE, OE, and EERE. Additional funding may come from non-DOE sources.

This CLIN supports the following functional areas:

- Process and Cost Engineering
- Financial Analysis
- Life Cycle Analysis
- Economic, Market, and Regulatory Analysis
- Technology Deployment and Program Benefit Analysis
- Energy Infrastructure Analysis
- Subsurface Analysis

Base Period – <b>Estimated DPLH - [TBD]</b>	Effective date through 36 Months
Total Estimated Cost	[\$TBD]
Maximum Award Fee Pool	[\$TBD]
Total Estimated Cost Plus Maximum Award Fee	[\$TBD]

**CLIN 3: TRANSITION**

The Contractor shall perform all transition activities to begin performance of MESA, consistent with this contract. Transition activities are defined as any effort that is necessary to transition the work from the incumbent Contractor in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (2) provides for an orderly transfer of resources, responsibilities, and accountability from the incumbent Contractor; and (3) allows the Contractor to perform the work in an efficient, effective, and safe manner. Specific transition activities will be identified at a future time; however, anticipated transition activities include, but are not limited to staffing, relocating, orienting, and training Key Personnel and other than Key Personnel, inventorying and assuming responsibility of Government Furnished Property (GFP), etc.

Expenses under this CLIN will be reimbursed for cost with no fee.

**Total Estimated Cost (no fee) \$TBD**

**Option Period (if applicable)****CLIN 1 (Mission Execution)**

The services to be delivered under this CLIN shall support effective and efficient execution of programs and projects at the U.S. Department of Energy's (DOE) National Energy Technology Laboratory (NETL). A *program* is an organized set of ongoing activities directed toward a common purpose or goal undertaken in support of an assigned mission area. Typically, a program is a group or portfolio of related projects, managed in a coordinated way to accomplish broad goals over some period of time to which individual *projects* contribute. Depending on the Technology Readiness Level (TRL) of a given technology, the associated timeline to develop technology from laboratory scale study to a pilot or full scale demonstration level may range from three to five years upwards to ten to fifteen years. Requirements, governing regulations, internal and external stakeholders, implementation strategies, and many other factors that influence NETL's mission vary among the research programs, thus affecting the time required for conducting qualified demonstrations. Research program initiatives are national in scope and emphasize partnerships with private industry, academia, state governments, not-for-profits, and other stakeholders to advance the knowledge base and develop technological solutions to national energy and environmental problems.

Activities for this CLIN focus on program initiatives and the project portfolios under the direction of the NETL Office [refer to NETL Organization in Section J.2 Attachment A-1 below] that supports the sponsoring organization. These Offices perform program and project management for sponsoring organizations which include, but are not limited to, the DOE's Offices of Fossil Energy (FE), Energy Efficiency and Renewable Energy (EERE), and Electricity Delivery and Energy Reliability (OE).

This CLIN supports the following functional areas:

- Program and Project Implementation
- Systems and Databases
- Assessments/Reviews/Evaluations
- Technical Information

Option Period – <b>Estimated DPLH - [TBD]</b>	If exercised, for 24 months
Total Estimated Cost	\$(TBD)
Maximum Award Fee Pool	\$(TBD)
Total Estimated Cost Plus Maximum Award Fee	\$(TBD)

**CLIN 2 (Strategic Analysis)**

This CLIN supports the management and execution of analyses to include an interdisciplinary personnel mix having technical expertise in scientific, engineering, economic, business, and policy disciplines needed for in-depth understanding and analysis of the energy-economic system of the United States, conventional and advanced energy technologies, and energy-related regulatory, legislative, and policy issues. The funding for the activities under this CLIN would come from various sources, such as, but not limited to, the DOE offices of FE, OE, and EERE. Additional funding may come from non-DOE sources.

This CLIN supports the following functional areas:

- Process and Cost Engineering
- Financial Analysis
- Life Cycle Analysis
- Economic, Market, and Regulatory Analysis
- Technology Deployment and Program Benefit Analysis
- Energy Infrastructure Analysis
- Subsurface Analysis

Option Period – <b>Estimated DPLH - [TBD]</b>	If exercised, for 24 months
Total Estimated Cost	\$(TBD)
Maximum Award Fee Pool	\$(TBD)
Total Estimated Cost Plus Maximum Award Fee	\$(TBD)

**B.2 ESTIMATED TOTAL COST OF CONTRACT**

The estimated total cost of this contract, inclusive of all CLINs and Maximum Available Fee Pools is **\$TBD**. This is an estimated total cost only and is not considered a ceiling value of the contract as this contract is to be available for the Government to obtain services for the contract period, even if the level of effort and/or the estimated cost as originally specified is insufficient. This is not a requirements type contract.

**B.3 LIMITATION OF FUNDS -- COST PLUS AWARD FEE**

Pursuant to FAR 52.232-22, "Limitation of Funds," total funds in the amount of \$(TBD) 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 [TBD].

**B.4 DISTRIBUTION OF PERFORMANCE AWARD FEE**

FEE PERIOD	FEE PERIOD BEGINNING DATE	FEE PERIOD ENDING DATE	AVAILABLE AWARD FEE POOL	FEE EARNED
1	<b>11/15/2014</b>	<b>5/14/2015</b>	*	**
2	<b>5/15/2015</b>	<b>11/14/2015</b>	*	**
3	<b>11/15/2015</b>	<b>5/14/2016</b>	*	**
4	<b>5/15/2016</b>	<b>11/14/2016</b>	*	**
5	<b>11/15/2016</b>	<b>5/14/2017</b>	*	**
6	<b>5/15/2017</b>	<b>11/14/2017</b>	*	**

\*Reference paragraph C contained in Section H, clause entitled Performance Based Award Fee. The Available Award Fee Pool is the sum of all award fee negotiated at the CLIN level, rolled up to a total contract amount for the fee period identified (e.g., all CLIN Annual Work Operating Plans with performance during the specified fee period dates will have the fee (negotiated, agreed upon, and identified on the Annual Work Operating Plans) rolled together into one total contract amount (as identified in the above Available Award Fee Pool column) for the months of performance that are within the dates specified for each fee period). The Available Award Fee Pool shall be filled in (through contract modification) for each fee period. For example, if an Annual Work Operating Plan is issued with a twelve month period of performance (example: 11/15/2014 through 11/14/2015) which included a negotiated award fee of \$150,000 a month, then the total available award fee pool for that Annual Work Operating Plan is \$900,000 for fee period 1 and \$900,000 for fee period 2.

NOTE: Unearned fee in any given period shall not be carried forward or "rolled-over" in subsequent periods.

Using the above example, if the Contractor earns \$500,000 in award fee from the available award fee pool identified for fee period 1 (\$900,000), the unearned fee (\$400,000) is foregone and will not be rolled over into the second fee period (i.e., the available award fee pool for fee period 2 remains unchanged).

\*\*The Fee Earned column shall be filled in (through contract modification) based on the total amount of fee earned under all of the Annual Work Operating Plans for each fee 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, award fee will be handled in accordance with FAR 52.249-6.

The November 15, 2014 date in the table above is a target date and subject to change based on award date and effective date.

**Section C - Description/Specifications**

**C.1 PERFORMANCE WORK STATEMENT**

The Performance Work Statement (PWS) 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 REPORT**

Reports shall be prepared and submitted in accordance with Attachment B located in Section J, and as specified in other clauses in the contract.

**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:

- A. Identifies the contract by number under which the item is being delivered.
- B. Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
- C. 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 52.246-5 INSPECTION OF SERVICES - COST-REIMBURSEMENT (APR 1984)**

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

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

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

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

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

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

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

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

(2) Terminate the contract for default.

**E.2 DOE-E-1001 INSPECTION AND ACCEPTANCE**

Inspection and acceptance of all items under this contract shall be accomplished by the Contracting Officer, the Contracting Officer's Representative (COR), or any other duly authorized Government representative identified by the Contracting Officer. The contractor will be notified in writing or by a copy of the delegation of authority if a different representative is designated.

**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 **thirty-six (36) months**. NOTE: The Government may elect not to exercise Option 1 (months thirty-seven (37) through sixty (60)).

**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** ( Months thirty-seven (37) through sixty (60)).

**F.2 PRINCIPAL PLACE OF PERFORMANCE**

The principal places of performance under this contract shall be at the National Energy Technology Laboratory (NETL), research centers in Morgantown, WV; and Pittsburgh, PA. The contractor shall be required to travel among sites. NETL may also require services at other locations, therefore the Contractor may be required to travel between, and provide services to various other locations in the United States.

**F.3 52.242-15 STOP-WORK ORDER (AUG 1989) - Alternate I (APR 1984)**

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

- (1) Cancel the stop-work order; or
- (2) The Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if -

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

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



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

**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.
2. Invoice date and invoice number. (The contractor should date invoices as close as possible to the date of the mailing or transmission).
3. Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
4. Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
5. 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.
6. 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).
7. Name (where practicable), title, phone number and mailing address of person to notify in the event of a defective invoice.
8. Taxpayer Identification Number (TIN). The contractor shall include its TIN on the invoice only if required elsewhere in this contract.
9. Electronic funds transfer (EFT) banking information.
  - a. The contractor shall include EFT 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., FAR 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., FAR 52.232-33, Payment by Electronic funds Transfer – System for Award Management, or FAR 52.232-34, Payment by Electronic Funds Transfer – Other Than System for Award Management), or applicable agency procedures.
  - c. EFT banking information is not required if the Government waived the requirement to pay by EFT.
10. Any other information or documentation required by the contract (e.g., evidence of shipment).

**B. Statement of Cost**

The SF 1034 and F 4220.50 shall be completed so as to make due allowances for the Contractor's cost accounting system. The F 4220.50 will be requested for Statement of Cost. The costs claimed shall be only those recorded costs (including cost sharing) which are authorized for billing by the payment provisions of this contract. 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., senior engineer, technician, etc.) the hourly rate, and the labor cost per category; equipment costs must be supported by a list of the equipment purchased, along with the item's cost; supporting data for travel must include the destination of the trip, number and labor category of travelers, transportation costs, per diem costs, and purpose of 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 costs-incurred-to-date which shall include separate lines for costs incurred, award fee, and DPLH as indicated below:

	Current Period	Cumulative Amount
Cost Incurred	XXXX	XXXX
Award Fee	XXXX	XXXX
DPLH	XXXX	XXXX

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: <https://vipers.oro.doe.gov>. Contractors must have a Federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system:

U.S. Department of Energy  
 Oak Ridge Financial Services Center  
 P.O. Box 4967  
 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 technical progress reports and/or monthly cost reports.

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 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://vipers.oro.doe.gov>. Contractors must have a Federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system.

I. Invoice Approval

The Contract Specialist and Invoice Approving Official is [TBD]. The Contracting Officer's Representative (COR) for the purposes of monitoring and coordinating the technical requirements of this contract is [TBD].

**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.

Refer to clause H.9, "Performance Evaluation Plan (PEP)" and clause H.10, "Performance Based Award Fee" for specifics on award fee.

**G.4 ACCOUNTABILITY OF COSTS/SEGREGATION OF CLINs**

All costs incurred by the Contractor under this contract shall be segregated by each CLIN (and further segregated or identified by work assignment and funding stream, if applicable). The Contractor shall, therefore, establish separate "Job Order Accounts and Numbers" for each CLIN and shall record all incurred costs in the appropriate job order account in accordance with the Work Breakdown Structure clause set forth in Part I Section H.

**G.5 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR**

A support service Contractor performs the function of processing of all invoices submitted to the National Energy Technology Laboratory, against its awards. Therefore, this Contractor has access to 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.6 OBSERVANCE OF LEGAL HOLIDAYS**

A. The on-site Government personnel observe the following holidays:

1. New Year's Day
2. Martin Luther King, Jr.'s Birthday
3. President's Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Veterans Day
9. Thanksgiving Day
10. Christmas Day
11. Any other day designated by Federal statute, Executive Order, or Presidential proclamation.

B. When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

C. The Contractor shall not exceed the total number of holidays identified in paragraph (A) above. Contractor

personnel shall comply with its own company's personnel policy and procedures regarding the administration of holidays. The costs associated with the observance of such holidays shall be consistent with company's established cost accounting standards and practices; other terms and conditions of the contract, and Federal Acquisition Regulation Part 31, Contract Cost Principles and Procedures.

- D. Any administrative time-off granted as a result of early holiday release; release or delay due to inclement weather; or any other administrative release is at the discretion of the Contractor. However, when granting any administrative time-off, the Contractor shall continue to provide sufficient personnel to perform critical or essential activities under this contract.
- E. Non-productive time, such as sick leave, vacation leave, and emergency leave, shall be charged in accordance with the Contractor's established accounting practices and procedures.

#### **G.7 DOE-G-1010 NONSUPERVISION OF CONTRACTOR EMPLOYEES ON GOVERNMENT FACILITIES**

The Government shall not exercise any supervision or control over Contractor employees performing services under this contract. The Contractor's employees shall be held accountable solely to the Contractor's management, who in turn is responsible for contract performance to the Government.

#### **G.8 ANNUAL WORK OPERATING PLAN**

The Contractor shall incur costs under this contract only in the performance of work authorized by the Contracting Officer (CO) based on the requirements identified in the Performance Work Statement (PWS), Annual Work Requirements, and the approved Contractor Work Operating Plan. No other costs are authorized without the express written consent of the CO.

- A. Prior to the start of each fiscal year, the CO shall provide to the Contractor an Annual Work Requirements document.
  - 1. NETL is responsible for planning and implementation of on-site research programs. These programs are designed to support development of energy related technologies to meet the nation's needs for clean, efficient energy systems with minimal environmental footprint. The planning process is designed to support NETL key technologies as well as to develop new initiatives for future programs that match the needs of the nation with NETL core competencies. The result is a comprehensive approach to solving specific technology issues critical to NETL which includes applied R&D focused on important new technologies with targeted fundamental research projects to accelerate this technology development. This information will then be utilized to develop the Annual Work Requirements document.
  - 2. Annual Work Requirements document shall further define the technical direction of research projects for the next fiscal year.
- B. Within fifteen (15) calendar days after the issuance of the Annual Work Requirements document, or as otherwise directed by the CO, the Contractor shall prepare and submit a Contractor Annual Work Operating Plan for review and approval (or rejection). Contractor Annual Work Operating Plans shall include:
  - 1. A separate Cost Plan for each CLIN identified in Section B1 of this contract. The Cost Plan shall propose cost against a work breakdown structure. This Cost Plan shall be in sufficient detail to demonstrate all estimated costs at the lowest level of work breakdown structure to identify all costs associated with each activity of the work identified and shall align with the estimated DPLH listed for each CLIN:
    - a. Estimated Cost and Direct Productive Labor Hours (DPLH) by labor category on a monthly basis, including overtime (if authorized), and total DPLH, including subcontractor and consultant DPLH, if applicable;
      - 1. A corresponding milestone schedule;
      - 2. A corresponding monthly staffing plan detailing proposed direct productive

man-hours by labor categories;

3. A Technical Approach Plan detailing the method to accomplishing the work identified in the PWS and Annual Work Requirements document;

4. Any known impacts to other previously authorized work.

b. Travel, training (travel, training, and transition are not fee bearing),

1. Travel and training are required to be approved by the Contracting Officer's Representative (COR) for each occurrence regardless of acceptance of an estimated cost plan that does not detail out each individual occurrence.

2. A travel and training plan may be submitted by the Contractor for each CLIN and approved in advance provided that it identifies each travel and training occurrence in sufficient detail as would be submitted on an individual basis.

c. Equipment, supplies, and materials estimate;

d. 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);

e. Other pertinent information (e.g., indirect costs, inter-divisional transfers);

f. Proposed award fee – fee proposed shall be estimated per month and not exceed the fee ceiling in Section B, clause entitled Fee Ceiling (by percentage of estimated cost proposed excluding travel, training, and any transition costs).

C. Upon receipt of the Contractor's Annual Work Operating Plan, it will be reviewed to determine if the plan is acceptable "as is" or if negotiations and/or discussions are required. The CO may reject all or part of the Contractor Annual Work Operating Plan. If rejected, the Contractor shall revise and resubmit within 10 (ten) calendar days from the rejection notification. This process will be repeated until the Contractor submits an Annual Work Operating Plan that is deemed sufficient to meet the Government's requirements.

D. Upon acceptance of the Contractor Annual Work Operating Plan, the Contractor shall commence work.

E. When "incurred cost to date" plus "the projected cost to complete" is expected to vary by plus or minus ten percent (based on individual Cost Plans by CLIN) from the Contractor Annual Work Operating Plan, the Contractor shall promptly submit a written explanation for the variance and a revised Cost Plan for that specific CLIN to the CO. Upon acceptance, work shall be considered authorized at the revised estimate on the Cost Plan. No authorization will be provided for the subsequent Annual Plans if the necessary adjustments have not been made to the existing plan.

F. On a quarterly basis, the Contractor shall review their Contractor Annual Work Operating Plan to determine if the Technical Approach and Cost Plan are still in line with the Government's written technical direction of work. If a revision is determined to be necessary, the Contractor shall promptly submit a revised Contractor Annual Work Operating Plan.

G. Deliverables may consist of statements, charts, reports, briefing notes, tabulations, view graphs, and other forms of presentation as appropriate.

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

**Section H - Special Contract Requirements**

**H.1 DOE-H-1051 CONSECUTIVE NUMBERING (MAY 2009)**

Due to automated procedures employed in formulating this document, clauses and provisions contained within 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 activities, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Performance Work Statement (PWS).
  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 Performance Work Statement;
  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, 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. Regardless of the performer of the work, the Contractor is responsible for complying with the requirements of the Department of Energy (DOE) personal property management program and the Federal Acquisition Regulations. The Contractor is responsible for flowing down the requirements to subcontractors at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.
- B. Acquisition Authorization Requirements - 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 without the express written consent of the Contracting Officer (CO) or as otherwise noted in this clause.
  - 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 Furnished Property (GFP) list" as directed by the CO or their designee (acquisition for replacement items will only be considered when it is not economically reasonable to repair).
  - 2. The Contractor may request authorization for acquisition of additional items (Contractor acquired property - not already on the GFP list) from the Contracting Officer. Request(s) for consideration shall be in written format and include a description of the item (including manufacturer and model number, serial number, and/or National Stock Number (NSN)), unit acquisition cost, quantity and unit of measure, and a brief rationale on the need for the item. Any such request shall include an analysis of the most economical method of acquisition (e.g., lease versus purchase) and shall describe any material equity arising from any proposed lease arrangement, such as option credits.
  - 3. Within 180 days of contract completion or upon request of the CO, the Contractor shall be required to provide a listing of all property acquired under direct charge to the contract. The listing shall include the Purchase Order number utilized to acquire the property, acquisition cost, property identification numbers, and current location of property. The Contractor shall be required to manage government-owned/titled property in accordance with FAR 52-245-1 and DOE Order 580.1A. The listing shall be submitted in accordance with section D of this clause.
  - 4. Authorization to acquire does not constitute consent to the placement of a subcontract.
- C. Government Property (Government Furnished Property and Contractor Acquired Property)
  - 1. Government property includes all "GFP" and "Contractor Acquired Property" (that is a direct charge to this contract).
  - 2. The Contractor shall establish, implement, and maintain a cost-effective, risk-based personal property management program to manage personal property from receipt, to use, to final disposition processing by acceptable means. The personal property management program is to be used for all Government property under this contract (GFP and Contractor Acquired Property).
  - 3. Contractors may use Voluntary Consensus Standards (VCS), such as ASTM International, or Industry Leading Practices (ILP), to the greatest degree practical for the management of personal property, as

deemed appropriate by the Property Administrator (PA)/Organizational Property Management Officer (OPMO) as designated by the CO.

4. In accordance with FAR Part 45 Government property that is incidental to the place of performance (i.e. office space, chairs, telephones, computers, printers, and fax machines) are not covered by this clause - when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor with the location remains accountable to the Government.
5. Contractors are responsible for ensuring personal property items that may reveal classified or controlled unclassified information (i.e. Official Use Only or Unclassified Controlled Nuclear Information) are managed and controlled in accordance with the requirements found in other DOE directives or Agency regulations.
6. Whenever practical, Government personal property (GFP and Contractor Acquired Property) shall be identified or tagged as U.S. Government property (or U.S. DOE property). The Contractor shall remove or permanently cover, to the extent practical, tags before formal release from DOE inventory/ownership.
7. Except as otherwise authorized by the Contracting Officer in writing, only that property specifically included in the "GFP List" shall be furnished.
8. A copy of the current "GFP List" is located on the Internet at <http://www.netl.doe.gov/business/site-support> and will be maintained at that site for availability during the solicitation phase of this contract. GFP is provided as-is/where-is and the Contractor is responsible for determining suitability for use.
9. The "GFP List" is broken into categories:
  - i. Capitalized Property – The capitalization threshold for items acquired prior to October 1, 2011 is \$50,000. For items acquired on or after October 1, 2011, the threshold is \$500,000. Capital equipment is to be managed in accordance with the DOE Financial Management Handbook.
  - ii. Accountable Property – Accountable Property is identified as personal property that exceeds the acquisition cost threshold (as identified in DOE Order 580.1A, currently \$10,000 or more) and administratively controlled items identified on the provided property matrix necessary for controlling items under the acquisition cost threshold to protect against unauthorized use, disclosure, or loss. The property matrix shall be provided in writing from the CO.
  - iii. Non-Accountable Property (Other GFP) – Non-Accountable Property is identified as other personal property with an acquisition cost less than the threshold for Accountable Property and not included on the property matrix list. These items are provided for the Contractor's use in performing the contract requirements and are titled to the Government.
  - iv. The "GFP List" is incorporated into this contract by reference in its entirety. No hard copy of the GFP List or the property matrix will be attached to this contract.
10. During performance of the contract, the Contractor (with written approval of the CO) may acquire additional property items. These items shall be categorized as Capitalized Property (see definition above); Accountable Property (see definition above); Non-Accountable Property (see definition above); Sensitive Property (as defined in DOE Order 580.1A); or High Risk Personal Property (as defined in DOE Order 580.1A).
11. In addition, the Contractor may be required to acquire or utilize "Precious Metals" in performance of the contract requirements. Precious metals are required to be managed and controlled in accordance with the requirements of DOE Order 580.1A.
12. Physical Inventories shall be properly planned and executed to continuously monitor property condition

and operational availability, and validate accountable property record accuracy. The scheduling, type, method, and scope of the physical inventory process are to align with management expectations and risks.

- i. Capitalized and Sensitive Property – Capitalized and sensitive property shall be inventoried at least annually with an accuracy expectation of 100%. Inventory method must be approved by the CO (or as designated to the PA/OPMO) and take into consideration the property condition, classification, and location.
  - ii. High Risk Personal Property (HRPP) – HRPP shall be inventoried at least annually. However, when a complete physical inventory (existence testing) is not appropriate, a sampling method can be used on a graded approach based on the assessed risk (safety considerations, restricted access, exposure to contamination, etc.). Inventory method must be approved by the CO (or as designated to the PA/OPMO) and take into consideration the property condition, classification, and location.
  - iii. Accountable Property – Accountable Property shall be inventoried at least every three years with an accuracy expectation of 98%. Inventory method must be approved by the CO (or as designated to the PA/OPMO) and take into consideration the property condition, classification, and location.
  - iv. Non-Accountable Property (Other GFP) – Non-Accountable Property shall be inventoried upon request of the CO or within the last year of contract performance in order to complete the required reporting of all Government Property in the control of the Contractor.
  - v. Physical inventories of spares or stores are required to be conducted on a frequency and method approved by the CO (or as designated to the PA/OPMO).
  - vi. Inventory methods may take different forms, including wall-to-wall, cyclic, sampling, and “by exception” methodologies (use of actions or transactions as an inventory event). Sampling may be used, where appropriate, provided the sampling approach achieves the statistically valid results.
  - vii. An independent group must validate the results of the physical inventory.
  - viii. Physical inventories shall be reconciled with financial records, as applicable.
  - ix. The Contractor shall submit inventory results and requested write-offs (of personal property not found) to the CO (or as designated to the PA/OPMO) for acceptance within 60 days of concluding the inventory. If the Contractor does not operate within acceptable tolerances, the Contractor shall use a graded approach to identify opportunities for improvement.
13. Accountable property records shall be maintained as a system of record and shall include at a minimum: Property control number (item unique identification); contract number; receipt date; description; manufacturer and model number, serial number, and/or NSN; unit acquisition cost; quantity and unit of measure; custodian; location; use status (active, storage, excess, retired, etc.); High risk designation, export control jurisdiction, and relevant export regulation citation (if applicable); and condition code.
14. Loaning of Personal Property may be authorized provided the property is:
- i. Not excess.
  - ii. Used in performing research, studies, and other efforts that result in benefits to both the U.S. Government and the borrower.
  - iii. Used by local agencies in support of health, safety, or security requirements in emergency conditions or upon appropriate Departmental notification of emergency conditions.

- iv. Loaned to another DOE organization, contractor, Government agency, or organization that has a valid Federal contract, financial assistance agreement, treaty, international or collateral agreement.
  - v. Approved using the a properly completed loan package including DOE F 4420.2 Loan Agreement form which must document that high risk, export control, and hazardous reviews have been completed (foreign loans, refer to DOE Order 580.1A Foreign Transactions).
15. Loss (to include theft), damage, or destruction of personal property shall be reported as soon as practical to the CO (or as designated to the PA/OPMO), and in accordance with local NETL procedures (and to security in the case of loss or theft). Reporting of loss, damage, or destruction is essential to the accountable property record audit trail and is required to formally reconcile accountable property records.
16. Disposition of property shall be coordinated with the NETL PA/OPMO.

**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.

Within 180 days of contract completion, the Contractor shall be required to provide a listing of all Government property (GFP and Contractor Acquired Property) still under the control of (assigned to) the Contractor. The listing shall include the Purchase Order number utilized to acquire the property, acquisition cost, property identification numbers, and current location of property. The listing shall be completed in a spreadsheet manner that can be sorted by the Government (recommend Excel Spreadsheet) and shall be broken into categories as identified in Section C-9 above.

**H.5 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR**

The Online Representations and Certifications Application (ORCA) for the Offeror will be downloaded and hereby incorporated by reference into the subsequent award.

**H.6 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 and DOE/NETL directives (e.g., orders, policies, and procedures).

**H.7 DOE-H-1009 POSITION QUALIFICATIONS**

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

**H.8 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

In the performance of this contract the Contractor shall comply with the requirements of the U.S. Department of Labor Wage Determination(s) and the Collective Bargaining Agreements (CBA)s located in Section J, Attachment E.

**H.9 PERFORMANCE EVALUATION PLAN (PEP)**

The Contractor's performance will be evaluated at the CLIN level and on the management of the contract as a whole 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.10 PERFORMANCE BASED AWARD FEE**

### **A. AWARD FEE DETERMINATION**

1. The Government shall, at the conclusion of each evaluation period, evaluate the Contractor's performance for a determination of performance based award fee earned.
2. The Contractor agrees that the determination of performance based award fee earned will be made solely by the Government Fee Determination Official (FDO) and such determination is binding on both parties.
3. 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" 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 award 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 CLIN 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. In the event that the Contractor's performance is considered unacceptable in any area of performance which is specified in the Performance Evaluation Plan, 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 prohibit the Contractor from earning fee.

(By way of example, in the ES&H area, the FDO may prohibit the Contractor from earning part or all 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.)

4. Unearned fee in any given period shall not be carried forward or "rolled-over" in subsequent periods.

### **B. CALCULATION OF AVAILABLE AWARD FEE POOL**

The available award fee pool will be established for each fee period of 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 POOL**

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. The meeting will discuss any new activities issued during the fee period to determine if activity performance is to be started during the fee period and if an adjustment to the available award fee pool (total of all CLIN Annual Work Operating Plans) is warranted based on inclusion of the activity for the months of performance within this fee period. In addition, the meeting will be to review, on a CLIN basis, any significant variances between estimated cost and actual cost incurred for the first four months of the performance period. In the event that a variance of greater than 10% is identified for a specific CLIN then the available award fee pool shall be reviewed for that CLIN Annual Work Operating Plan to determine if an adjustment is warranted. 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 CLIN is appropriate. Fee shall not be adjusted based solely on a variance of costs incurred, therefore, the COR shall provide variances between planned and actual DPLH in performance during the first four month performance period. Variances are assumed to fall into one of the following categories:

1. Actuals may underrun/overrun plan attributable to the Contractor's management or performance of the contract (i.e., implementation of best practices; applied cost efficiencies; poor work processes; misalignment of work resources; slipped schedules due to poor performance; etc.). In these instances an adjustment to the fee pool (increase or decrease) would not be made.
2. The work schedule, as agreed upon for activities within a CLIN's Annual Work Operating Plan, had to be revised based on Government direction, causing the work and its associated DPLH to move to a future performance period. In this case, the fee dollars should migrate with the work and a straight-line adjustment to the available fee may be appropriate.
3. Actuals may underrun/overrun plan due to changes in programmatic nature of the scope (based on Government direction). Some adjustment to the pool should be made, but a straight line adjustment may not be appropriate.

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

Refer to clause B.4, "Distribution of Performance Award Fee," for specifics on award fee distribution.

#### **H.11 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 PWS.

- 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 (unless stated otherwise in the work plan or the service is required to be provided by the Contractor under a work plan issued under this contract).
- 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 (unless stated otherwise in the work plan or the service is required to be provided by the contractor under a work plan issued under this contract).
- F. Refuse Collection: The Government shall provide refuse collection at Government-furnished facilities (unless stated otherwise in the work plan or the service is required to be provided by the contractor under a work plan issued under this contract).
- 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 PWS and in performance of individual activity(s).
- I. Equipment Maintenance: The Government shall maintain equipment (unless stated otherwise in the work plan or the service is required to be provided by the Contractor under a work plan issued under 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 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.
- M. Software applications: The Government will provide on-site support contractors access to key computer based applications (e.g., AutoCAD, FIMS, CHAMPS, PAMS, CAIS, etc.).

#### **H.12 DOE-H-1021 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 where lighting is essential for purpose of safety and security.

#### **H.13 USE OF GOVERNMENT-OWNED EQUIPMENT/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 currently has office/work spaces for no more than 85 FTEs at the Pittsburgh site, and 86 FTEs at the Morgantown site that are available for use by on-site Contractor personnel. The availability of office/work space is subject to change and will be based on current availability for each specific NETL site. Other associated Government furnished items for the on-site personnel include: office/work space, office/work area furniture, local area network services, parking facilities, and other services as described in the clause entitled "Government Provided Services."

#### **H.14 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.15 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 (CSPM) and the Contracting Officer's Representative (COR) in all information security matters.

##### **B. CLASSIFIED MATERIAL**

Performance under the contract may involve access to classified material. If access to classified material is required, the Contractor shall be required to obtain necessary security clearances for personnel who will have

access to classified material. For unclassified material, 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.

#### 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.

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 and submit a completed loss/theft report using the NETL standardized form (currently NETL-F 470.1-1-1) with NETL Security 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 Contractors 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 unauthorized 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 CSPM. 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.

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 various laws, regulations and agreements. The Contractor agrees, in the performance of this contract, to keep sensitive information in the strictest of confidence and to protect it from unauthorized modification or destruction. 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.16 DOE-H-1025 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES**

The Government may award contracts for on-site work or services to additional contractors. The Contractor shall cooperate fully with all other on site DOE Contractors, and with Government employees, and carefully fit its own work to such other work as may be directed by the Contracting Officer or a duly authorized representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by a Government employee. The Contractor shall notify the Contracting Officer’s Representative (COR) immediately of any act that is causing interference with their performance of work.

### **H.17 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, 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:

1. WBS Level 1: Contract Level Reporting
2. WBS Level 2: Activity Level Reporting
3. WBS Level 3: Sub-activity Level Reporting (if needed)

Further levels as appropriate.

**H.18 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:

- a) Is, or is suspected of being, a terrorist;
- b) Is the subject of an outstanding warrant;
- c) 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;
- d) Has presented false or forged identity source documents;
- e) Has been barred from Federal employment;
- f) Is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer; or
- g) 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.19 IDENTIFICATION BADGES - NETL**

All personnel working at the National Energy Technology Laboratory will be required to wear identification badges at all times. Identification badges will be assigned to a Contractor official for issuance to the personnel employed for work under this contract.

#### **H.20 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 that upon request by DOE it will execute a DOE-approved nondisclosure/nonuse agreement whose facilities or proprietary data the contractor is given access to or is furnished. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

This clause shall flow down to all subcontracts.

#### **H.21 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 as well as contract administration. 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.

This clause shall flow down to all subcontracts.

#### **H.22 DOE-H-1033 PERMITS AND LICENSES**

Within sixty (60) days of award, the Contractor shall submit to the DOE Contracting Officer Representative (COR) a list of Environment, Safety and Health approvals that, in the Contractor's opinion, shall be required to complete the work under this award. This list shall include the topic of the approval being sought, the approving authority, and the expected submit/approval schedule. The COR shall be notified as specific items are added or removed from the

list and processed through their approval cycles.

The Contractor agrees to include this clause in their first-tier subcontracts and agrees to enforce the terms of this clause.

### **H.23 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.24 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 (reference Part II, Section H, clause entitled Focused Standards List), 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 Officer 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 Officer 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.25 FOCUSED STANDARDS LIST**

The Contractor shall adhere to all applicable NETL ES&H Focused Standards as indicated in the Focused Standards list which is currently posted on the SSC electronic reading room located at:

<http://www.netl.doe.gov/business/site-support>

This list may be modified from time to time during the contract. After contract award, the list will be available at the following NETL Intranet site: [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. It should not be construed that all of the standards on the list would be applicable to operations required under this contract.

**H.26 QUALITY ASSURANCE – SITE SUPPORT**

The Contractor shall maintain an effective Quality Assurance (QA) Program during the course of the contract. A QA Management Plan is required in accordance with the Reporting Requirements Checklist, Part III, Section J, Attachment B. The QA Management Plan shall address both technical and administrative deliverables and services. The Government will not serve in the quality control function for the Contractor. Downward adjustments in fee may be assessed if the QA Management Plan is not followed and a deliverable or service provided by the Contractor to the Government requires rework or is unacceptable due to poor quality. Poor quality work contain errors which include but are not limited to typographical errors, grammatical errors, operational errors, programming errors, and errors of fact.

**H.27 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.28 HAZARDOUS WASTE MANIFESTS AND LABELS**

The Contractor shall not identify, on waste manifests or container labels or otherwise, the DOE or the NETL as the owner or generator of hazardous waste without written permission, signed by the Contracting Officer or his/her designee.

**H.29 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.30 DOE-H-1034 OBLIGATIONS AS TO PROTECTED ENERGY POLICY ACT (EPACT) INFORMATION (FEB 2003)**

(a) The provisions of the Energy Policy Act of 1992, P.L. 102-486 (42 U.S.C. §13541(d)) require the protection from public disclosure, for a period of up to five years from development, of information resulting from the award or performance of this contract that would be trade secret or privileged or confidential commercial or financial information if the information that is privileged or confidential had been obtained from a non-Federal party for a period of up to 5 years after the submittal of the information. This protection from public disclosure includes exemption from disclosure pursuant to 5 U.S.C. § 552(b) (The Freedom of Information Act).

(b) The cover page of any document subject to and protectable under the provisions of P.L. 102-486 (42 U.S.C. §13541(d)), shall be marked with the following legend:

PROTECTED EPACT INFORMATION

THIS DOCUMENT CONTAINS PROTECTED INFORMATION WHICH WAS SUBMITTED ON *[insert date]* UNDER AGREEMENT NO. DE-*[insert award number]* AND IS NOT TO BE FURTHER DISCLOSED FOR A PERIOD OF UP TO 5 YEARS AFTER DEVELOPMENT OF THE INFORMATION EXCEPT AS EXPRESSLY PROVIDED FOR IN THE SUBJECT AWARD.

In addition, the Recipient will mark each page of the document with the words "PROTECTED EPACT INFORMATION."

(c) The Government agrees not to further disclose such protected information for a period of up to 5 years from the date it was submitted, except (1) to be provided to other DOE facilities with the same protection in place, (2) as necessary to perform this agreement or (3) as otherwise mutually agreed to in advance.

(d) The obligations in (c) above shall end when any such protected information becomes publicly known without fault of the Government, comes into the Government's possession without breach by the Government of its obligations or is independently developed by someone who did not have access to the Protected Agreement Information.

(e) Notwithstanding any other provision of this contract, the following technical data first produced under this contract as a minimum, shall be delivered to the DOE with unlimited rights:

TBD

### **H.31 DOE-H-1035 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) - PRIOR APPROVALS**

The National Environmental Policy Act of 1969 (NEPA) requires that all Federal agencies consider the impacts of their projects on the human environment. As part of the DOE's NEPA requirements, the Contractor shall be required to supply to the DOE certain environmental information. DOE funds may only be expended by the Contractor on TBD activities, or in a manner consistent with 40 CFR 1506.1, until DOE notifies the Contractor that all NEPA requirements have been satisfied. In the event that the Contractor expends its own or third party funds on activities not authorized by this provision, such expenditures are entirely at the Contractor's risk that DOE's NEPA analysis will support such activities.

### **H.32 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.33 DOE-H-1040 LOBBYING RESTRICTIONS (APPROPRIATIONS ACT 2013)**

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to

influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

#### **H.34 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 subject to the limitations contained in FAR 31.205-46 and the terms and conditions of this contract. Foreign travel is not expected to be incurred under this contract; however, in the event that foreign travel is required, it shall be subject to DEAR 952.247-70. Travel and training must be pre-approved by the Contracting Officer's Representative (COR) or designee. The Contractor shall submit travel and/or training requests at least thirty (30) days in advance of the anticipated start date of the travel and/or training.

#### **H.35 DOE-H-1048 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS MAY 2011**

Pursuant to Executive Orders 13423, Strengthening Federal Environmental, Energy and Transportation Management, and 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well-being of its Federal employees and contractor service providers. As a service provider at a DOE facility you are urged to assist us in our efforts. Sustainable acquisition or environmentally preferable contracting has several interacting initiatives. Among the initiatives are the following:

Alternative Fueled Vehicles and Alternative Fuels  
 Biobased Content Products (USDA Designated Products)  
 Energy Efficient Products  
 Non-Ozone Depleting Alternative Products  
 Recycled Content Products (EPA Designated Products)  
 Water Efficient Products (EPA WaterSense Labeled Products)

You should familiarize yourself with these information resources:

Recycled Products are described at <http://epa.gov/cpg>  
 Biobased Products are described at <http://www.biopreferred.gov/>  
 Energy efficient products are at <http://energystar.gov/products> for Energy Star products and  
 FEMP designated products are at <http://www.eere.energy.gov/femp/procurement>  
 Environmentally Preferable Computers are at <http://www.epeat.net>  
 Non-Ozone Depleting Alternative Products at <http://www.epa.gov/ozone/strathome.html>  
 Water efficient plumbing fixtures at <http://epa.gov/watersense>

In the course of providing services at the DOE site, if your services necessitate the acquisition of any of these types of products, it is expected that you will acquire the sustainable, environmentally preferable models unless the product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. While there is no formal reporting, DOE prepares a sustainable acquisition annual report and you may be asked to share information for our report.

#### **H.36 DOE-H-1055 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY (JULY 2011)**

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.) comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for fielded product management, development and implementation available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor shall (1) obtain the Contracting Officer's approval before starting work on the deliverable; and (2) have IPv6 technical support for fielded product management, development and implementation available.



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

### **H.37 AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE) LEASING**

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

### **H.38 LIMITATION ON SOFTWARE**

The Contractor shall not violate license agreements (express or implied), copy, change (with the exception of vendor-supplied updates or maintenance requirements), or release to a third party, Government-furnished software, including other vendors' proprietary software, for any purpose other than that for which it was provided to the Contractor under the terms of this contract.

Unless provided as Government-furnished software, the Contractor shall not use software in which the Contractor holds proprietary rights, or rights as a licensee, without the prior written authorization of the Contracting Officer or designee.

The Contractor agrees not to restrict the design and development of software in such a fashion that it shall unreasonably favor specific vendor hardware and software.

The Government may require the Contractor to register the copyright on software developed for the Government under this contract.

### **H.39 DOE-H-1061 KEY PERSONNEL (JULY 2011)**

#### **(a) Introduction.**

Key Personnel are considered essential to the success of all work being performed under this contract. This Clause provides specific requirements, in addition to the requirements of the clause in Section I entitled, "DEAR 952.215-70 Key Personnel," for the Key Personnel Team, requirements for changes to Key Personnel, reductions in available fee for changes to Key Personnel, and identification of all Key Personnel for this Contract.

#### **(b) Key Personnel Team Requirements.**

The Contracting Officer and designated Contracting Officer's Representative(s) shall have direct access to the Key Personnel. All Key Personnel shall be permanently assigned to the position. In addition to the definition contained in the Section I Clause entitled, "DEAR 952.215-70, Key Personnel," Key Person(s) are considered managerial personnel.

#### **(c) Definitions.**

For the purposes of this Clause, Changes to Key Personnel is defined as: (i) any change to the position assignment of a current Key Person under the contract, except for a person who acts for short periods of time, in the place of a Key Person during his or her absence the total time of which shall not exceed 30 working days during any given year; (ii) utilizing the services of a new substitute Key Person for assignment to the contract; or (iii) assigning a current Key Person for work outside the Contract.

#### **(d) Contract Award Fee Reductions for Changes to Key Personnel**

- (a) Notwithstanding approval by the Contracting Officer, anytime the Program Manager (the initial

Program Manager or any substitution approved by the Contracting Officer) is changed for any reason after being placed in the position, the total Available Award Fee Pool (sum of all individual CLIN award fee pools), may be reduced, for the fee period in which the change occurs, by \$200,000 for each and every occurrence of a change to the Program Manager.

- (b) Notwithstanding approval by the Contracting Officer, anytime a Key Person other than the Program Manager (any initial Key Person or any substitution approved by the Contracting Officer) is changed for any reason after being placed in the position, the total Available Award Fee Pool (sum of all individual CLIN award fee pools), may be reduced, for the fee period in which the change occurs, by \$50,000 for each and every occurrence of a change to the Key Person.
- (c) The Contractor may request, in writing, that the Contracting Officer consider waiving all or part of a reduction in the available award fee pool. Such written request shall include the factual basis for the request. The Contracting Officer shall have unilateral discretion to make the determination to waive or not waive all or part of a reduction in the available award fee pool.
- (d) Key Personnel for this Contract

The Key Personnel that have been approved for this contract are identified below. Any changes to these personnel require prior DOE Contracting Officer's written approval.

<u>Name</u>	<u>Position/Title</u>
[TBD]	Program Manager
[TBD]	Business Manager
[TBD]	[TBD]

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.

**H.40 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.41 INDIRECT COSTS**

Pending establishment of final indirect cost rates (e.g., G&A, NETL specific on-site overhead, off-site overhead, etc.) 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. The change shall not be implemented until the Contracting Officer has reviewed and approved the documentation provided.

NETL requires the use of an NETL on-site overhead rate. For clarification purposes, the following two definitions are provided.

Project Management Office (PMO) - The PMO shall include the all cost associated with Key Personnel and administrative support personnel (e.g., HR, Procurement, Property, Time Keeping, Project Control, Reporting Requirements, Contract Management (including contract level reporting), Property Management (contract level reporting and property inventories associated with Government Furnished and Contractor Acquired property utilized under the annual work operating plans issued), Integrated Safety Management, Quality Assurance oversight, and Environmental Safety and Health oversight etc.) necessary for the overall management of the contract. For audit and application consistencies, the Individuals performing these functions shall not be charged as direct costs to any of the annual work operating plans issued (shall be included in the NETL specific on-site overhead rate).

NETL Specific On-Site Overhead Rate - The NETL specific on-site overhead rate shall include the Contractors cost elements, inclusive of PMO cost elements, to perform work on-site at NETL taking into consideration the facilities, property, and services provided by NETL for on-site support. Since this rate is specific to this requirement it is not expected that there will be any conflict with a Contractor’s audited rate structure.

**H.42 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, off-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 [TBD - percentage of overall rate or percentage of growth for individual or groups of cost elements] basis. All indirect costs in excess of said limit(s) shall be borne by the Contractor.

Percentage of Overall Rate Entity[TBD]		Indirect Cost Ceiling Rate(s) per Contractor’s Fiscal Year (1)				
Indirect Cost	Base of Application	FY[TBD]	FY[TBD]	FY[TBD]	FY[TBD]	FY[TBD]
NETL Site Specific On-Site Overhead	\$(TBD)	[TBD]%	[TBD]%	[TBD]%	[TBD]%	[TBD]%
Off-Site Overhead (Contractor’s site)	\$(TBD)	[TBD]%	[TBD]%	[TBD]%	[TBD]%	[TBD]%
G&A	\$(TBD)	[TBD]%	[TBD]%	[TBD]%	[TBD]%	[TBD]%

(1) For Contractor’s FY beginning [TBD] and ending [TBD].

Or

B) Percentage of Growth for Individual or Group of Cost Elements

Entity[TBD]		Indirect Cost Ceiling Rate(s) per Contractor’s Fiscal Year (1)				
Indirect Cost	Cost Element	FY[TBD]	FY[TBD]	FY[TBD]	FY[TBD]	FY[TBD]
NETL Site Specific On-Site Overhead	[TBD]	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed
Off-Site Overhead (Contractor’s site)	[TBD]	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed
G&A	[TBD]	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed

*(1) For Contractor's FY beginning [TBD] and ending [TBD].*

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. The indirect rate ceilings contained in this clause shall be negotiated prior to the placement of any cost-reimbursement subcontracts not previously authorized in Part I, Section, H, "Prior Approval Requirements for Placement of Subcontracts and/or Consultants." The prime contractor is responsible for negotiating the indirect rate ceilings and ensuring a copy is contained in the subcontract approval package submitted to the Government. However, if the subcontractor is concerned with the prime contractor having access to company proprietary information, with permission from the prime contractor, the required information can be submitted directly to the Government for negotiation. In this instance, the prime contractor will forward an e-mail to the Contract Specialist stating their intention/agreement for the Government to negotiate the indirect rate ceilings. Upon completion, the Government will maintain the agreed upon rate ceilings and provide the prime contractor with a written notification that negotiations with the subcontractor have been completed.

#### **H.43 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 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. 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 921-107  
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 calendar 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 to DOE IRCO, 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 under this contract.

**H.44 INCORPORATION OF CONTRACTOR'S VALUE ADDED APPROACHES OR METHODOLOGIES AND CONTRACTOR'S RESOURCES AND COMMITMENTS**

- A. As part of its proposal, the Contractor offered certain approaches or methodologies that are of significant benefit to NETL. The following list of approaches or methodologies have been proposed by the Contractor and accepted by the Government:

[TBD]

- B. As part of its proposal, the Contractor offered certain resources and commitments at no cost to the Government to support mission specific activities of significant benefit to NETL. The following list of resources and commitments have been proposed by the Contractor and accepted by the Government:

[TBD]

1. The Contractor shall provide to the Contracting Officer an annual report of accomplishments against the commitments specified above at the end of each Government fiscal year. The Contractor agrees that such reports may be made available to the public. The Contractor shall make available to DOE data that will validate the accomplishments of these commitments. A final report documenting and certifying the total commitments provided by the Contractor to NETL shall be submitted to NETL thirty (30) days prior to the end of the contract period. The annual reports and final report shall constitute deliverables under this contract.
  2. The costs associated with the Contractor's efforts in achieving its commitment under this clause are not allowable as direct or indirect charges against this contract or any other government contract or agreement.
- C. In the event it is determined by NETL, that the Contractor failed to achieve its commitment on an annual basis, NETL shall notify the Contractor in writing and the Fee Determination Official may elect to reduce the fee for the final fee period of that particular year. If the Government must acquire a contractor committed resource at

its own expense, the Contractor shall also be liable to the Government for the cost of the resource plus the Government's cost of acquiring the resource.

#### **H.45 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:

[TBD]

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.46 SUBCONTRACTOR FACILITIES CAPITAL COST OF MONEY**

- A. 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.
- B. 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:
  1. Waiver of Facilities Capital Cost of Money (FAR 52.215-17, OCT 1997)
  2. 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.
- C. 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.47 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.48 COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS (CRADA) SUBJECT INVENTIONS (Applicable to Nonprofit entities and small businesses only)**

The contractor agrees that, upon written application by DOE/NETL, it will enter into good faith negotiations to license to DOE/NETL or to the CRADA participant(s), as appropriate, an exclusive license(s) in the field of use negotiated by DOE/NETL for any CRADA subject invention(s) made by contractor on terms that are reasonable under the circumstances.

#### **H.49 FOREIGN NATIONAL ACCESS APPROVAL**

##### **1. Introduction**

It is in the interest of both the Government and the contractor to be aware of approval requirements for Foreign Nationals assigned work under this contract and how they relate to export controls, access to DOE sites, and access to DOE information, technologies, and equipment regardless of whether the work is performed at a DOE site or off-site location/facility.

This clause is required to be flowed down to all subcontracts at all tiers.

##### **2. Definitions.**

Foreign national, as used in this clause, is defined in DOE Order 142.3, Unclassified Foreign Visits and Assignments Program.

Fundamental research, as used in this clause, is defined in National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information.

On-site, as used in this clause, is defined as a DOE site.

Off-site, as used in this clause, is defined as a location or facility not located on a DOE site, including the contractor's facilities/site.

##### **3. Requirements:**

DOE Order 142.3 requires processing for all foreign nationals seeking access to DOE sites, and access to DOE information, technologies, and equipment regardless of whether the work is performed on-site or off-site. Requests for access must be approved by DOE on an individual basis.

The Contractor is required to complete form NETL F 142.1-1 Request for Unclassified Foreign National Visit, Assignment, or Access for any Foreign National identified to perform unclassified work under this contract (refer to DOE Order 142.3 for requirements related to classified work) at least forty five days prior to site access. The NETL form is required for all individuals who will have access to DOE information, technologies, and equipment regardless of whether the work is performed on-site or off-site and all individuals who require access to DOE sites.

In accordance with 15 CFR 734.11, if fundamental research is funded by the U.S. Government, compliance with DOE Order 142.3 will result in preservation of any application of the exception to Export Administration Regulations (EAR) found at 15 CFR. Violation of the control requirements set forth in this award, and subsequently required in flow-down requirements, may result in non-application of the available EAR exception.

The Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, excludes citizens of Iran from entering the United States and seeking education relating to the nuclear and energy sectors of Iran.

##### **4. References:**

DOE Order 142.3, Unclassified Foreign Visits and Assignments Program



15 CFR 730-780, Export Administration Regulations (EAR)

National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information

H.R. 1905, Iran Threat Reduction and Syria Human Rights Act of 2012

## **H.50 COST ESTIMATING SYSTEM REQUIREMENTS**

### *(a) Definitions.*

*Acceptable estimating system* means an estimating system that complies with the system criteria in paragraph (d) of this clause, and provides for a system that—

- (1) Is maintained, reliable, and consistently applied;
- (2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;
- (3) Is consistent with and integrated with the Contractor's related management systems; and
- (4) Is subject to applicable financial control systems.

*Estimating system* means the Contractor's policies, procedures, and practices for budgeting and planning controls, and generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards or contract modifications. Estimating system includes the Contractor's—

- (1) Organizational structure;
- (2) Established lines of authority, duties, and responsibilities;
- (3) Internal controls and managerial reviews;
- (4) Flow of work, coordination, and communication; and
- (5) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

*Significant deficiency* means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish, maintain, and comply with an acceptable estimating system.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply if the Contractor is a large business to include a contractor teaming arrangement, as defined at 48 CFR 9.601(1), performing a contract in support of a Capital Asset Project (other than a management and operating contract as described at 917.6), as prescribed in DOE Order (DOE O) 413.3B, or current version; or a non-capital asset project and either—

- (1) The total prime contract value exceeds \$50 million, including options; or
- (2) The Contractor was notified, in writing, by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) *System requirements.* (1) The Contractor shall disclose its estimating system to the Contracting Officer, in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements required in this clause.

(2) An estimating system disclosure is acceptable when the Contractor has provided the Contracting Officer with documentation no later than 60 days after contract award that—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

(3) The Contractor shall—

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the Contracting Officer on a timely basis.

(4) The Contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

An acceptable estimating system shall accomplish the following functions:

(i) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.

(ii) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.

- (iii) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures.
- (iv) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.
- (v) Provide for adequate supervision throughout the estimating and budgeting process.
- (vi) Provide for consistent application of estimating and budgeting techniques.
- (vii) Provide for detection and timely correction of errors.
- (viii) Protect against cost duplication and omissions.
- (ix) Provide for the use of historical experience, including historical vendor pricing information, where appropriate.
- (x) Require use of appropriate analytical methods.
- (xi) Integrate information available from other management systems.
- (xii) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.
- (xiii) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.
- (xiv) Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner.
- (xv) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.
- (xvi) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.
- (xvii) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Energy Acquisition Regulation (48 CFR chapter 9).
- (e) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
  - (i) Remaining significant deficiencies;
  - (ii) The adequacy of any proposed or completed corrective action; and
  - (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (f) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (g) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's estimating system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

#### **H.51 EARNED VALUE MANAGEMENT SYSTEM**

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

*Acceptable earned value management system* means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.

*Earned value management system* means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748.

*Over Target Baseline* means an overrun to the Contract Budget Base (CBB) which is formally incorporated into the Performance Measurement Baseline (PMB) for management purposes.

*Over Target Schedule* means the term used to describe a condition where a baseline schedule is time-phased beyond the contract completion date.

*Significant deficiency* means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) *System criteria.* In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748, current version at time of award); and

(2) *Management procedures.* (i) Management procedures provide for generation of timely, reliable, and verifiable information for DOE Integrated Program Management Report (IPMR) data item of this contract.

(ii) The Contractor shall use Department of Defense's Data Item Description (DID) Integrated Program Management Report (IPMR), DI-MGMT-81861, (current version at time of award) which contains data for measuring cost and schedule performance for this DOE contract. The report's structure has seven formats that contain the content and relationships required for electronic submissions. DOE does not use section 2.8 Applicability of DI-MGMT-81861 for electronic data submissions, in lieu of this section, the Contractor shall use Project Assessment and Reporting System (PARS II). Data shall be submitted by the Contractor electronically by uploading the data into the PARS II in accordance with the "Contractor Project Performance Upload Requirements" document maintained by the DOE Office of Acquisition and Project Management (OAPM). All requested data shall be submitted timely and accurately, and shall be current as of the close of the previous month's accounting period.

(c) If the Contractor has one or more DOE contracts valued at \$20,000,000 or greater per contract for a total contract value of \$50,000,000 or more which support DOE Capital Asset Projects, the Contractor shall use an EVMS that has been determined to be acceptable by DOE. If, at the time of award, the Contractor's EVMS has not been determined by DOE to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this contract has a total value of less than \$50,000,000 and does not meet the condition described at (c) above, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts.

(e) The Contractor shall submit notification of all proposed changes to the EVMS procedures and the impact of those changes to DOE. If this contractor has one or more contracts in support of DOE Capital Asset Projects and the total contract values are \$20,000,000 or greater per contract for total contract values of \$50,000,000 or more, unless a waiver is granted by DOE, any EVMS changes proposed by the Contractor require approval of DOE prior to implementation. DOE will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If DOE waives the advance approval requirements, the Contractor shall disclose EVMS changes to DOE at least 14 calendar days prior to the effective date of implementation.

(f) *Integrated baseline reviews.* (1) The purpose of the integrated baseline reviews (IBR) is to verify the technical content and the realism of the related performance budgets, resources, and schedules. It should provide a mutual understanding of the inherent risks in the Offerors'/Contractors' performance plans and the underlying management control systems, and it should formulate a plan to handle these risks. DOE and the Contractor will use the IBR process described in the National Defense Industrial Association Program Management Systems Committee Integrated Baseline Review (NDIA PMSC IBR) Guide (current version at time of award).

(2) The Government will schedule IBRs as early as practicable, and the review process will be conducted not later than 180 calendar days after—

(i) Contract award;

(ii) The exercise of significant contract options; and

(iii) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of

cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(i) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's EVMS.

If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748; and (iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the contracting officer will use discretion to disapprove the system based on input received from the DOE Office of Acquisition and Project Management or the DOE

Program Office, herein referred to as the functional specialists.

(4) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(j) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(k) With the exception of paragraphs (i) and (j) of this clause, for contracts valued at \$20 million or more requiring EVMS, the contractor shall flow down appropriate EVMS requirements to its subcontractors in order for the contractor to meet all requirements of this clause.

*[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]*

(l) *Adopting previous Contractor's previously certified earned value management (EVM) process.* If the Contractor plans to adopt the existing system from the previous Contractor or DOE-site, the Contractor is responsible for the system and shall comply with the system requirements required in this clause. The existing system shall utilize the same DOE approved EVM Process Description and the same EVM training as the previous system. The Contractor shall –

(1) Identify the corporate entity which owns the certified EVM process and provide the certification documentation;

(2) Obtain DOE prior approval or Advanced Agreement including DOE approval of process changes and joint surveillance;

(3) Be responsible for compliance with the system criteria required in paragraph (b) of this clause; and

(4) Be responsible for correcting any significant deficiencies previously identified to the previous Contractor by the Contracting Officer in accordance with paragraph (i) of this clause. Within 45 days after receiving a copy of the previous contractor's final determination, the Contractor shall follow paragraph (i)(4) and either correct any significant deficiencies or submit an acceptable corrective action plan. The Contracting Officer or designee will provide a copy of the previous contractor's final determination.

## **H.52 ACCOUNTING SYSTEM ADMINISTRATION**

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

(1) *Acceptable accounting system* means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—

- (i) Applicable laws and regulations are complied with;
  - (ii) The accounting system and cost data are reliable;
  - (iii) Risk of misallocations and mischarges are minimized; and
  - (iv) Contract allocations and charges are consistent with billing procedures.
- (2) *Accounting system* means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.
- (3) *Significant deficiency* means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.
- (b) *General.* The Contractor shall establish and maintain an acceptable accounting system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its accounting system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments if the contract includes the Section H clause Contractor Business Systems, and also may result in disapproval of the system.
- (c) *System criteria.* The Contractor's accounting system shall provide for—
- (1) A sound internal control environment, accounting framework, and organizational structure;
  - (2) Proper segregation of direct costs from indirect costs;
  - (3) Identification and accumulation of direct costs by contract;
  - (4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;
  - (5) Accumulation of costs under general ledger control;
  - (6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;
  - (7) Approval and documentation of adjusting entries;
  - (8) Management reviews or internal audits of the system to ensure compliance with the Contractor's established policies, procedures, and accounting practices;
  - (9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;
  - (10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;
  - (11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;
  - (12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of 48 CFR part 31, Contract Cost Principles and Procedures, and other contract provisions;
  - (13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;
  - (14) Segregation of preproduction costs from production costs, as applicable;
  - (15) Cost accounting information, as required—
    - (i) By contract clauses concerning limitation of cost (48 CFR 52.232-20), limitation of funds (48 CFR 52.232-22), or allowable cost and payment (48 CFR 52.216-7); and
    - (ii) To readily calculate indirect cost rates from the books of accounts;
  - (16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;
  - (17) Adequate, reliable data for use in pricing follow-on acquisitions; and
  - (18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.
- (d) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
- (i) Remaining significant deficiencies;
  - (ii) The adequacy of any proposed or completed corrective action; and
  - (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's accounting system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

### **H.53 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION**

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

*Acceptable purchasing system* means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

*Purchasing system* means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

*Significant deficiency* means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable purchasing system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its purchasing system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's purchasing system shall—

- (1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (48 CFR Chapter 9);
- (2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;
- (5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
- (6) Apply a consistent make-or-buy policy that is in the best interest of the Government;
- (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
- (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- (11) Document negotiations in accordance with 48 CFR 15.406-3;
- (12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- (13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (15) Document and justify reasons for subcontract changes that affect cost or price;

- (16) Notify the Government of the award of all subcontracts that contain the 48 CFR Chapter 1 and 48 CFR Chapter 9 flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;
- (17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 U.S.C. chapter 87, Kickbacks;
- (18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
- (19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the 48 CFR chapter 1, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;
- (20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
- (21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;
- (22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;
- (23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and
- (24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—
- (i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
- (ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).
- (d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
- (i) Remaining significant deficiencies;
- (ii) The adequacy of any proposed or completed corrective action; and
- (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.
- (f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the Section H clause Contractor Business systems, the Contracting Officer will withhold payments in accordance with that clause.

#### **H.54 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION**

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

*Acceptable property management system* means a property system that complies with the system criteria in paragraph (c) of this clause.

*Property management system* means the Contractor's system or systems for managing and controlling Government property.

*Significant deficiency* means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable property management system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its property management system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's property management system shall be in accordance with paragraph (f) of the contract clause at 48 CFR 52.245-1.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's property management system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

## **H.55 CONTRACTOR BUSINESS SYSTEMS**

(a) This clause only applies to fixed-price contract awarded to a large business on the basis of adequate price competition with or without submission of cost or pricing data; or covered contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulation found at 48 CFR 9903.201-1(a) and is not exempted at 9903.201-1(b)(1) through (14) (see the 48 CFR Appendix).

(b) *Definitions.* As used in this clause –

*Acceptable contractor business systems* means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of “contractor business systems” in this clause.

*Contractor business systems means –*

- (1) Accounting system, if this contract includes the Section H clause Accounting System Administration;
- (2) Earned value management system, if this contract includes the Section H clause Earned Value Management System;
- (3) Estimating system, if this contract includes the Section H clause Cost Estimating System Requirements;
- (4) Property management system, if this contract includes the Section H clause Contractor Property Management System Administration; and
- (5) Purchasing system, if this contract includes the Section H clause Contractor Purchasing System



## Administration.

*Significant deficiency*, in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(c) *General.* The Contractor shall establish and maintain acceptable business systems in accordance with the terms and conditions of this contract. If the Contractor plans to adopt any existing business systems from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements and criteria required in that specific business system clause.

(d) *Significant deficiencies.* (1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor's business systems.

(2) The Contracting Office will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains significant deficiencies. If the Contracting Officer determines that the Contractor's business system contain significant deficiencies, the final determination will include a notice to withhold payments.

(e) *Withholding payments.* (1) If the Contracting Officer issues the final determination with a notice to withhold payments for significant deficiencies in a contractor business system required under this contract, the Contracting Officer will direct the Contractor, in writing, to withhold five percent from its invoices until the Contracting Officer has determined that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. The Contractor shall, within 45 days of receipt of the notice, either –

(i) Correct the deficiencies; or

(ii) Submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies. The plan shall contain –

(A) Root cause(s) identification of the problem(s);

(B) The proposed corrective action(s) to address the root cause(s);

(C) A schedule for implementation; and

(D) The name of the person responsible for the implementation.

(2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer's intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will direct the Contractor, in writing, to reduce the percentage withheld on invoices to tow percent until the Contracting Officer determines the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding and direct the Contractor, in writing, to increase the percentage withheld on invoices to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

(3) *Payment withhold percentage limits.*

(i) The total percentage of payments withheld on amounts due on this contract shall not exceed –

(A) Five percent for one or more significant deficiencies in any single contractor business system; and;

(B) Ten percent for significant deficiencies in multiple contractor business systems.

(ii) If this contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.

(4) For the purpose of this clause, payment means invoicing for any of the following payments authorized under this contract:

(i) Interim payments under –

(A) Cost-reimbursement contracts;

(B) Incentive type contracts;

(C) Time-and-materials contracts; or

(D) Labor-hour contracts.

(ii) Progress payments to include fixed-price contracts.

(iii) Performance-based payments to include fixed-price contracts.

(5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.

(6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this contract.

(7) Notwithstanding the provisions of any clause in this contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment in accordance with the provisions of this clause.

(8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.

(f) *Correction of deficiencies.* (1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's deficiencies.

(2) Once the Contractor has notified the Contracting Officer that all deficiencies have been corrected, the Contracting Officer will take one of the following actions:

(i) If the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, the Contracting Officer will direct the Contractor, in writing, to discontinue the payment withholding from invoices under this contract associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other significant deficiencies. Any payment withholding under this contract due to other significant deficiencies, will remain in effect until the Contracting Officer determines that those significant deficiencies are corrected.

(ii) If the Contracting Officer determines that the Contractor still has significant deficiencies, the Contractor shall continue withholding amounts from its invoices in accordance with paragraph (e) of this clause, and not invoice for any monies previously withheld.

(iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the Contracting Officer will discontinue withholding payments, and release any payments previously withheld directly related to the significant deficiencies identified in the Contractor notification, and direct the Contractor, in writing, to discontinue the payment withholding from invoices associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld.

(iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will direct the Contractor, in writing, to reduce the payment withholding from invoices directly related to the significant deficiencies identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause.

(v) At any time after the Contracting Officer directs the Contractor to reduce or discontinue the payment withholding from invoices under this contract, if the Contracting Officer determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding and direct the Contractor, in writing, to reinstate or increase the percentage withheld on invoices to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

**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): <https://www.acquisition.gov/far/>  
 Department of Energy Regulations (Clauses starting with 952): <http://farsite.hill.af.mil/VFDOE1.HTM>

**I.2 52.202-1 DEFINITIONS (NOV 2013)**

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

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

**I.3 952.202-1 DEFINITIONS**

(a) As prescribed in 902.201, insert the clause at 48 CFR 52.202-1, Definitions, in all contracts. The following shall be added to the clause as paragraph (c):

(c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

**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 (OCT 2010)**

(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 \$150,000.

**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 (OCT 2010)**

(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 contract 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 \$150,000 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 \$150,000.

#### **I.11 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010)**

(a) Definitions. As used in this clause-

"Agent" means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

"Full cooperation" - (1) Means disclosure to the Government of the information sufficient for law

enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require-

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from-

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

"United States" 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;

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

(2) The Contractor shall-

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3)(i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed-

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

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

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

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

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) 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, including-

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts. (1) 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.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

**I.12 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)**

(a) Definition.

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

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)-

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites-

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s) Obtain from

[https://www.jlab.org/ehs/Hotline\\_poster.pdf](https://www.jlab.org/ehs/Hotline_poster.pdf)

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract-

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

(2) Is performed entirely outside the United States.

**I.13 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)**

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

**I.14 952.203-70 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.15 952.204-2 SECURITY (MAR 2011)**

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

(b) Regulations. The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.

(c) Definition of Classified Information. The term Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as National Security Information.

(d) Definition of Restricted Data. The term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 (Section 142, as amended, of the Atomic Energy Act of 1954).

(e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information-

(1) relates primarily to the military utilization of atomic weapons; and

(2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

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

(g) Definition of Special Nuclear Material. The term "special nuclear material" means-

(1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which,



pursuant to 42 U.S.C. 2071 (section 51 as amended, of the Atomic Energy Act of 1954) has been determined to be special nuclear material, but does not include source material; or

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

(h) Access authorizations of personnel.

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

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

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

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

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

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

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

(vi) The Contractor must furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization-

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

(i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

(j) Foreign Ownership, Control, or Influence.

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests, executed prior to award of this contract. Contractors are encouraged to submit this information through the use of the online tool at <https://foci.td.anl.gov/>. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

(k) Employment announcements. When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope

polygraph examination.

(l) Flow down to subcontracts. The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, Certificate Pertaining to Foreign Interests, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

**I.16 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POST-CONSUMER FIBER CONTENT PAPER (MAY 2011)**

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

"Postconsumer fiber" means-(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.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

**I.17 52.204-7 SYSTEM FOR AWARD MANAGEMENT (JUL 2013)**

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

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

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

*Registered in the System for Award Management (SAM) database* means that-

(1) The Offeror has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart [4.14](#)) into the SAM database;

(2) The Offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

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

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

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

(1) An Offeror may obtain a DUNS number-

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

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

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

(i) Company legal business.

(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 SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

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

(f) Offerors may obtain information on registration at <https://www.acquisition.gov>.

**I.18 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)**

(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 account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

- (1) When no longer needed for contract performance.
- (2) Upon completion of the Contractor employee's employment.
- (3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

**I.19 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2013)**

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

*Executive* means officers, managing partners, or any other employees in management positions.

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

*Month of award* means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

*Total compensation* means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes 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 Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans.* This 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, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public; therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information.

(d)(1) *Executive compensation of the prime contractor.* As a part of its annual registration requirement in the System for Award Management (SAM) database (FAR provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, 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), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the 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. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

(2) *First-tier subcontract information.* Unless otherwise directed by the contracting officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, the Contractor shall report the following information at <http://www.fsrs.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrs.gov> to report the data.)

(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) 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.
- (vi) Subcontract number (the subcontract number assigned by the Contractor).
- (vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (ix) The prime contract number, and order number if applicable.
- (x) Awarding agency name and code.
- (xi) Funding agency name and code.
- (xii) Government contracting office code.
- (xiii) Treasury account symbol (TAS) as reported in FPDS.
- (xiv) The applicable North American Industry Classification System code (NAICS).

(3) *Executive compensation of the first-tier subcontractor.* Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.fsrs.gov>, if-

- (i) In the subcontractor's preceding fiscal year, the subcontractor received-
  - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
  - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
- (ii) The public does not have access to information about the compensation of the 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. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than \$25,000 to avoid the reporting requirements in paragraph (d).

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g)(1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor.

(h) The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM database information is incorrect, the contractor is responsible for correcting this information.

**I.20 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (JUL 2013)**

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

*Data Universal Numbering System (DUNS) number* means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal Contractors.

*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 SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at subpart 32.11) for the same concern.

*Registered in the System for Award Management (SAM) database* means that-

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

*System for Award Management (SAM)* means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes-

- (1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
- (2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and



(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

(b) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM 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 SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(c)(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 SAM 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 shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (c)(1)(i) of this clause, or fails to perform the agreement at paragraph (c)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM 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 SAM 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 SAM. Information provided to the Contractor's SAM 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.

(3) The Contractor shall ensure that the DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Contractor shall communicate any change to the DUNS number to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted-

(i) Via the internet at <http://fedgov.dnb.com/webform> or if the Contractor 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.

(d) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.acquisition.gov>.

**I.21 52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS (JAN 2014)**

(a) Definition.

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

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this contract during the preceding Government fiscal year (October 1-September 30).

(c) The Contractor shall report the following information:

- (1) Contract number and, as applicable, order number.
- (2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.
- (3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.
- (4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at [www.sam.gov](http://www.sam.gov). (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the contracting officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f)(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

- (i) Subcontract number (including subcontractor name and DUNS number); and
- (ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

**I. 22 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)**

In the performance of work under this contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e.,

Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

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

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

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

### **I.23 952.204-73 FACILITY CLEARANCE (MAR 2011)**

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

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

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

(1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the Offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package. Contractors are encouraged to submit this information through the use of the online tool at <https://foci.td.anl.gov>. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

(2) Information submitted by the Offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the Offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the Offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

(b) Definitions

(1) Foreign Interest means any of the following—

- (i) A foreign government, foreign government agency, or representative of a foreign government;
- (ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
- (iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon—

- (1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;
- (2) A contract or proposed contract containing the appropriate security clauses;
- (3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
- (4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;
- (5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;
- (6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and
- (7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the Offeror will not pose an undue risk to the common defense and security as a result of its

access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the Offeror to submit such additional information as deemed pertinent to this determination.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

**NOTICE TO OFFERORS—CONTENTS REVIEW  
(PLEASE REVIEW BEFORE SUBMITTING)**

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

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

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

**I.24 952.204-76 CONDITIONAL PAYMENT OF FEE OR PROFIT-SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION (JAN 2004)**

(a) General.

(1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the Contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) including compliance with applicable law, regulation, and DOE directives. The term "Contractor" as used in this clause to address failure to comply shall mean "Contractor or Contractor employee."

(2) In addition to other remedies available to the Government, if the Contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information, the Contracting Officer may unilaterally reduce the amount of fee or profit that is otherwise

payable to the Contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the Contractor will be determined by the severity of the Contractor's failure to comply with contract terms and conditions relating to the safeguarding of restricted data or other classified information pursuant to the degrees specified in paragraph (c) of this clause.

(b) Reduction Amount.

(1) If in any period (see 48 CFR 952.204-76 (b)(2)) it is found that the Contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information, the Contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The Contracting Officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 904.402(c)). The mitigating factors include, but are not limited to, the following:

- (i) Degree of control the Contractor had over the event or incident.
- (ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.
- (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
- (iv) General status (trend and absolute performance) of safeguarding Restricted Data and other classified information and compliance in related security areas.

(2) (i) For purposes of this clause, (2)(i) Except in the case of performance-based firm-fixed-price contracts (see paragraph (b)(3) of this clause), the Contracting Officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of 6 months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the Contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the Contracting Officer will at the time of contract award include negative monetary incentives in the contract for Contractor violations relating to the safeguarding of Restricted Data and other classified information.

(c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the Contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives

pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

**I.25 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.26 952.208-70 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 8½ 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.27 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013)**

(a) Definition. Commercially available off-the-shelf (COTS) item, as used in this clause-

(1) Means any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

(b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, 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.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

(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.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that-

- (1) Exceeds \$30,000 in value; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

**I.28 RESERVED**

**I.29 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (JUL 2013)**

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management database via <https://www.acquisition.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS consist of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIS is automatically transferred after a waiting period of 14 calendar days, except for--

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite FAR 52.209-9 and request removal within 7 calendar days of the posting to FAPIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained,

i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

**I.30 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009)**

(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 therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of (Contracting Officer see 48 CFR 909.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

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

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

(2) Access to and use of information.

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

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

(B) compete for work for the Department based on such information for a period of six

(6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

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

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

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

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

(c) Disclosure after award.

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

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

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

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

**I.31     RESERVED**

**I.32     RESERVED**

**I.33     52.210-1 MARKET RESEARCH (APR 2011)**

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

“Commercial item and nondevelopmental item” have the meaning contained in Federal acquisition Regulation 2.101.

(b) Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to--

(1) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(i) Meet the agency's requirements;

(ii) Could be modified to meet the agency's requirements; or

(iii) Could meet the agency's requirements if those requirements were modified to a reasonable extent; and

(2) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level.

**I.34 52.215-2 AUDIT AND RECORDS – NEGOTIATION (OCT 2010)**

(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) *Certified cost or pricing data.* If the Contractor has been required to submit certified 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 certified 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 and to interview any current 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) 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 certified 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.35 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.36 52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011)**

(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 certified 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 certified 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 certified 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 certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified 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 certified 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) Interest compounded daily, as required by 26 U.S.C. 6622, 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 certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

**I.37 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA. (OCT 2010)**

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified 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 certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), 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 certified 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 certified cost or pricing data for the subcontract; or

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

**I.38 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)**

(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 certified 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 certified 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.39 RESERVED**

**I.40 52.215-16 FACILITIES CAPITAL COST OF MONEY**

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205-10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

**I.41 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT 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.42 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.43 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA – MODIFICATIONS (OCT 2010)**

(a) *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified 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 certified 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 certified cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(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.44 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)**

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

"Added value" means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

"Excessive pass-through charge," with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

"No or negligible value" means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

"Subcontract" means any contract, as defined in FAR 2.101, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor," as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) General. The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) Reporting. Required reporting of performance of work by the Contractor or a subcontractor. The

Contractor shall notify the Contracting Officer in writing if--

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) Recovery of excessive pass-through charges. If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and

(2) For applicable DoD fixed-price contracts, as identified in 15.408(n)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) Access to records. (1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) Flowdown. The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

**I.45 52.216-7 ALLOWABLE COST AND PAYMENT (JUN 2013)**

(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 as supplemented by subpart 931.2 of the DEAR in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

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

(3) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request.

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

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of the 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) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no

cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

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

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

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

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

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

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

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

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

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

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

(F) Facilities capital cost of money factors computation.

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

(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) Subcontract information. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact

information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see FAR 52.242-4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at [http://www.whitehouse.gov/omb/procurement\\_index\\_exec\\_comp/](http://www.whitehouse.gov/omb/procurement_index_exec_comp/).

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal

year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

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

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

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

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

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

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

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

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



(1) Shall be the anticipated final rates; and

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

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

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

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

(2) Adjusted for prior overpayments or underpayments.

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

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

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

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

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

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

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

#### **I.46 952.216-7 ALLOWABLE COST AND PAYMENT**

As prescribed in 916.307(a), when contracting with a commercial organization modify paragraph (a) of the clause at 48 CFR 52.216-7 by adding the phrase "as supplemented by subpart 931.2 of the Department of Energy Acquisition

Regulations (DEAR)," after "FAR subpart 31.2".

**I.47 FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) days of the end of the contract period.

**I.48 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within the term of the contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

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

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

**I.49 52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (NOV 2011)**

(a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *Applicability.* This clause applies only to--

(1) Contracts that have been totally set aside or reserved for small business concerns; and

(2) Orders set aside for small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

(c) *General.* (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(d) *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.

**I.50 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (JUL 2013)**

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

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

(iii) 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

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

"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)(1) 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 small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include -

(i) HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm); or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).

**I.51 52.219-14 LIMITATIONS ON SUBCONTRACTING (NOV 2011)**

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

(b) Applicability. This clause applies only to--

(1) Contracts that have been set aside or reserved for small business concerns or 8(a) concerns;

(2) Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) concerns; and

(3) Orders set aside for small business or 8(a) concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

(c) 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 non-manufacturer 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.52 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.53 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 "zero" 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.

**I.54 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.55 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.56 52.222-17 NONDISPLACEMENT OF QUALIFIED WORKERS (JAN 2013)**

(a) “Service employee”, as used in this clause, means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term “service employee” includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(b) The Contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the service employees were hired, a right of first refusal of employment under this contract in positions for which the service employees are qualified.

(1) The Contractor and its subcontractors shall determine the number of service employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor Contractor employed in connection with performance of the work.

(2) Except as provided in paragraph (c) of this clause, there shall be no employment opening under this contract, and the Contractor and any subcontractors shall not offer employment under this contract, to any person prior to having complied fully with this obligation.

(i) The successor Contractor and its subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.

(ii) The successor Contractor and its subcontractors shall decide any question concerning a service employee’s qualifications based upon the individual’s education and employment history, with particular emphasis on the employee’s experience on the predecessor contract, and the Contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with Executive Order 13495.

(iii) Where the successor Contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor’s first date of performance on the contract.

(iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bonafide offer of employment).

(c)

(1) Notwithstanding the obligation under paragraph (b) of this clause, the successor Contractor and any subcontractors

(i) may employ under this contract any service employee who has worked for the contractor or subcontractor for at least three months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge,

(ii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act, 41 U.S.C. 6701(3), and

(iii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor whom the Contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.12 (c)(4) for additional information). The successor Contractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.

(2) In addition, any Contractor or subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (e.g., it must ensure that at least 35 percent of all of its employees reside within a HUBZone). The HUBZone small business Contractor or subcontractor must consider whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.

(3) Nothing in this clause shall be construed to permit a Contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart 19.13), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

(d)

(1) The Contractor shall, not less than 30 days before completion of the Contractor's performance of services on the contract, furnish the Contracting Officer with a certified list of the names of all service employees working under this contract and its subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Contractor shall, in accordance with paragraph (e) of this clause, not less than 10 days before completion of the services on this contract, furnish the Contracting Officer with an updated certified list of the names of all service employees employed within the last month of contract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the contract and its predecessor contracts with either the current or predecessor Contractors or their subcontractors.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(3) The Contracting Officer will direct the predecessor Contractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor contractor. Where a significant portion of the predecessor Contractor's workforce is not fluent in English, the notice shall be provided in English and the language(s) with which service employees are more familiar. The written notice shall be—

(i) Posted in a conspicuous place at the worksite; or

(ii) Delivered to the service employees individually. If such delivery is via e-mail, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.



(e)

(1) If required in accordance with FAR 52.222-41(n), the predecessor Contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor Contractors or their subcontractors. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor Contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of FAR 52.222-41(n) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(f) The Contractor and subcontractor shall maintain the following records (regardless of format, e.g., paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

(1) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the service employees from the predecessor contract to whom an offer was made.

(2) A copy of any record that forms the basis for any exemption claimed under this part.

(3) A copy of the service employee list provided to or received from the contracting agency.

(4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Contractor shall also deliver a copy of the receipt to the service employee and file the original, as evidence of payment by the Contractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.

(g) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause (FAR 52.223-1) of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the service employees under the contract or its predecessor contract. The Contracting Officer will refer any service employee who wishes to file a complaint, or ask questions concerning this contract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Contact e-mail: [displaced@dol.gov](mailto:displaced@dol.gov).

(h) The Contractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.

(i) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Contractor or its subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

(j) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance. However, if the Contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the Contractor may request that the United States, through the Secretary, enter into such litigation to protect the interests of the United States.

(k) The Contracting Officer will withhold, or cause to be withheld, from the prime Contractor under this or any other Government contract with the same prime Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If the Contracting Officer or the Administrator, upon final order of the Secretary, finds that the Contractor has failed to provide a list of the names of service employees working under the contract, the Contracting Officer may, in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of contract funds until such time as the list is provided to the Contracting Officer.

(l) Subcontracts. In every subcontract over the simplified acquisition threshold entered into in order to perform services under this contract, the Contractor shall include a provision that ensures—

(1) That each subcontractor will honor the requirements of paragraphs (b) through (c) of this clause with respect to the service employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor Contractor and its subcontractors;

(2) That the subcontractor will provide the Contractor with the information about the service employees of the subcontractor needed by the Contractor to comply with paragraphs (d) and (e) of this clause; and

(3) The recordkeeping requirements of paragraph (f) of this clause.

**I.57 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.58 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.59 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (SEP 2010)**

(a) Definitions. As used in this clause -

"All employment openings" means all positions except executive and senior 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.

"Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

"Disabled veteran means" -

(1) A veteran of the U.S. military, ground, naval, or air service, 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 Secretary of Veterans Affairs; or

(2) A person who was discharged or released from active duty because of a service-connected disability.

"Executive and senior management" means -

(1) Any employee -

(i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per

week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(ii) 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;

(iii) Who customarily and regularly directs the work of two or more other employees; and

(iv) 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; or

(2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

"Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

"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 disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

"Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(b) General. (1) The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal 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 individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:

(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.

(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).

(3) The Department of Labor's regulations require contractors with 50 or more employees and a contract of \$100,000 or more to have an affirmative action program for veterans. See 41 CFR part 60-300, subpart C.

(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 employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.

(2) The Contractor shall make the listing of employment openings with the appropriate employment service delivery system 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 workforce 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, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, 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 disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and

(ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are 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 disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal 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. This includes implementing any sanctions imposed on a contractor by the Department of Labor for violations of this clause (FAR 52.222-35, Equal Opportunity for Veterans). These sanctions (see 41 CFR 60-300.66) may include-

- (1) Withholding progress payments;
- (2) Termination or suspension of the contract; or
- (3) Debarment of the contractor.

(g) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts 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 Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

**I.60 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010)**

(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 \$15,000 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.61 52.222-37 EMPLOYMENT REPORTS ON VETERANS (SEP 2010)**

(a) Definitions. As used in this clause,

"Armed Forces service medal veteran," "disabled veteran," "other protected veteran," and "recently separated veteran," have the meanings given in the Equal Opportunity for Veterans clause FAR 52.222-35.

(b) 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 total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and



(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. 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

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

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

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

**I.62 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)**

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the national Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, 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.63 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.64 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*

<b>Employee Class</b>	<b>Monetary Wage -- Fringe Benefits</b>
<b>Computer Analyst I</b>	<b>GS-9</b>
<b>Computer Analyst II</b>	<b>GS-11</b>
<b>Computer Analyst III</b>	<b>GS-12</b>
<b>Engineering Technician I</b>	<b>GS- 3</b>
<b>Engineering Technician II</b>	<b>GS-4</b>
<b>Engineering Technician III</b>	<b>GS-5</b>
<b>Engineering Technician IV</b>	<b>GS-7</b>
<b>Engineering Technician V</b>	<b>GS-9</b>
<b>Engineering Technician VI</b>	<b>GS-11</b>
<b>General Clerk I</b>	<b>GS-1</b>
<b>General Clerk II</b>	<b>GS-2</b>
<b>General Clerk III</b>	<b>GS-3</b>
<b>General Clerk IV</b>	<b>GS-4</b>
<b>Secretary I</b>	<b>GS-4</b>
<b>Secretary II</b>	<b>GS-5</b>



<b>Secretary III</b>	<b>GS-6</b>
<b>Secretary IV</b>	<b>GS-7</b>
<b>Secretary V</b>	<b>GS-8</b>
<b>Word Processor I</b>	<b>GS-3</b>
<b>Word Processor II</b>	<b>GS-4</b>
<b>Word Processor III</b>	<b>GS-5</b>

**I.65 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (SEP 2009)**

- (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, contract unit price labor rates, or fixed hourly 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 the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly 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.66 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009)**

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

"Coercion" means-

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

"Forced Labor" means knowingly providing or obtaining the labor or services of a person--

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of--

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

"Severe forms of trafficking in persons" means--

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subsection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) Policy. The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not--

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract; or

(3) Use forced labor in the performance of the contract.

(c) Contractor requirements. The Contractor shall--

(1) Notify its employees of--

(i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification. The Contractor shall inform the Contracting Officer immediately of--

(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and

(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in--

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of

this contract; or

(6) Suspension or debarment.

(f) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(g) Mitigating Factor. The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

**I.67 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013)**

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

*Commercially available off-the-shelf (COTS) item-*

(1) Means any item of supply that is-

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee-

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

*United States*, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award,

the Contractor shall-

(i) *Enroll*. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees*. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract*. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of-

(i) *All new employees*. (A) *Enrolled 90 calendar days or more*. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days*. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract*. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees*. The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of-

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee-

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that-

(1) *Lists for-* (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

**I.68 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEPT 2013)**

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.biopreferred.gov>.

(c) In the performance of this contract, the Contractor shall—

(1) Report to <http://www.sam.gov>, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

**I.69 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) - ALTERNATE I (JUL 1995)**

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

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

**MATERIAL**

(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) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

#### **I.70 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)**

(a) Definitions. As used in this clause-

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

(b) Federal facilities are required 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 and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

**I.71 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.72 52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)**

The Contractor's work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.

**I.73 970.5223-3 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)**

- (a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.
- (b) By submission of its offer, the offeror agrees to provide to the Contracting Officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707. DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5(g).
- (c) Failure of the Offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the Offeror unqualified and ineligible for award.

**I.74 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)**

- (a) **Program Implementation.** The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) **Remedies.** In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) **Subcontracts.** (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.
  - (2) The DOE Prime Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE Prime Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
  - (3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

**I.75 52.223-10 WASTE REDUCTION PROGRAM (MAY 2011)**

- (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 3(e) of Executive Order 13423, the Contractor shall

establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract.

**I.76 RESERVED**

**I.77 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/eeep\\_requirements.html](http://www1.eere.energy.gov/femp/procurement/eeep_requirements.html)

**I.78 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)**

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired--

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

**I.79 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)**

(a) Definitions. As used in this clause -

"Driving" - (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"Text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to -

(1) Adopt and enforce policies that ban text messaging while driving -

(i) Company-owned or rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as -

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

**I.80 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.81 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.82 52.225-5 TRADE AGREEMENTS (NOV 2013) (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 (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

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

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, 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.83 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)**

(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 Burma or 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.84 952.226-71 UTILIZATION OF ENERGY POLICY ACT TARGET ENTITIES (JUN 1996)**

(a) Definition. Energy Policy Act target groups, as used in this provision means—

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent—

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Obligation. In addition to its obligations under the clause of this contract entitled Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the Energy Policy Act target groups.

**I.85 952.226-72 ENERGY POLICY ACT SUBCONTRACTING GOALS AND REPORTING REQUIREMENTS (JUN 1996)**

(a) Definition. Energy Policy Act target groups, as used in this provision means—

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent—

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Goals. The Contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities—

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: \* \* \* percent;

(2) Historically Black colleges and universities: \* \* \* percent; and

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: \* \* \* percent. [\* \* \* These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]

(c) Reporting requirements.

(1) The Contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the Contracting Officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under FAR 52.219-9, Small Business Subcontracting Plan, the Contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

**L.86 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)**

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance, the entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

**I.87 970.5227-1 RIGHTS IN DATA—FACILITIES (DEC 2000)**

## (a) Definitions.

(1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

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

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

## (b) Allocation of Rights.

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used

in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

(1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting.

(1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in

Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

#### Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. - - - with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(f) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. - - - -. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. - - - with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a R-mo/yr, may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

**I.88 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)**

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

**I.89 52.227-3 PATENT INDEMNITY (APR 1984)**

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

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

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

the Contractor;

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

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

**I.90 970.5227-7 ROYALTY INFORMATION (DEC 2000)**

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

- (1) Name and address of licensor;
- (2) Date of license agreement;
- (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
- (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
- (5) Percentage or dollar rate of royalty per unit;
- (6) Unit price of contract item;
- (7) Number of units; and
- (8) Total dollar amount of royalties.

(b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the Offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

**I.91 970.5227-8 REFUND OF ROYALTIES (AUG 2002)**

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

- (1) Name and address of licensor;
- (2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
- (3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
- (4) Percentage or dollar rate of royalty per unit;
- (5) Unit price of contract item;
- (6) Number of units;
- (7) Total dollar amount of royalties; and



(8) A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

**I.92 952.227-11 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995)**

(a) Definitions.

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

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

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

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government

procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor.

(1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a

country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file.

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

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

(f) Contractor action to protect the Government's interest.

(1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and

(ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) Subcontracts.

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at DEAR 952.227-13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that

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

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the

Contractor, assignee, or their licensees;

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

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications.

(1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978. (3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) a report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) a report, prior to closeout of the contract, listing all subject inventions or stating that there

were none.

**I.93 952.227-13 PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT (SEP 1997)**

(a) Definitions.

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

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

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

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

"DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109- 6 or successor regulations. See 10 CFR part 784.

"Agency licensing regulations" and "applicable agency licensing regulations", as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocations of principal rights.

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

(2) Greater rights determinations.

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

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

(iii) Not less than thirty (30) days before the expiration of the response period for any action

required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government.

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

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

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that - (A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees; (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

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

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention. (2) Nothing

contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor.

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

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

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

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

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

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

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

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's



best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

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

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

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

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

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

(vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports.

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

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

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

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

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

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause. (5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether -

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and e(4) of this clause;

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

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

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

(g) Withholding of payment (NOTE: This paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to -

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

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

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

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

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

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

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

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

(h) Subcontracts.

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

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

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

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

Officer.

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

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

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

(i) Preference United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) Atomic energy.

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

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

(k) Background Patents.

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

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

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

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

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on

terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

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

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

(ii) the Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter. 1) Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) Forfeiture of rights in unreported subject inventions.

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

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

(ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later. (2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

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

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

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

#### **I.94 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)**

Except for data contained on pages [TBD], it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in the proposal dated [TBD], upon which this contract is based.

**I.95 952.227-84 NOTICE OF RIGHT TO REQUEST PATENT WAIVER (FEB 1998)**

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at DEAR 952.227-11 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities.

Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

**I.96 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.97 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.98 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)**

(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) (1) The contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be-

(i) Included in the contract price; nor

(ii) Reimbursed.

(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.99 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.100 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.101 52.232-17 INTEREST (OCT 2010)**

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified 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.102 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.103 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 end of the current fiscal year. 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 the end of the current fiscal year, 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.104 52.232-20 LIMITATION OF COST (APR 1984)**

(a) The parties estimate that performance of this contract, exclusive of any fee, 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 Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that -

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) 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 (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; 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 the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, 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.

**I.105 52.232-22 LIMITATION OF FUNDS (APR 1984)**

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause -

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of -

(i) The amount then allotted to the contract by the Government or;

(ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of -

(1) The amount previously allotted by the Government or;

(2) If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

**I.106 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.107 52.232-25 PROMPT PAYMENT (JUL 2013) – 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., FAR 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., FAR 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or FAR 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), 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 FAR 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.108 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT (JUL 2013)**

(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 System for Award Management (SAM) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the SAM 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 SAM database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the SAM 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 SAM 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.

(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 SAM database.

**I.109 52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)**

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

- (1) Any such clause is unenforceable against the Government.
- (2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.
- (3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

**I.110 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)**

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

**I. 111 52.233-1 DISPUTES (JUL 2002) - ALTERNATE I (DEC 1991)**

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

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

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation

of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

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

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**I.112 52.233-3 PROTEST AFTER AWARD (AUG 1996) - ALTERNATE I (JUN 1985)**

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor

to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

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

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

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

**I.113 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.114 952.215-70 KEY PERSONNEL (DEC 2000)**

(a) The personnel listed in Section H of this contract are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

(1) notify the Contracting Officer reasonably in advance;

(2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and

(3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

**I.115 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.116 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.117 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.118 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.119 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.120 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.121 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.122 52.244-2 SUBCONTRACTS (OCT 2010) - ALTERNATE I (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 certified 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 certified 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 certified 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 certified 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) If the Contractor has an approved purchasing system and consent is not required under paragraph (c) or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of

entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) 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.123 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.124 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2013)**

(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 non-developmental 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) FAR [52.203-13](#), Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal

criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) FAR [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) FAR [52.219-8](#), Utilization of Small Business Concerns (Jul 2013) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include FAR [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iv) FAR [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(v) FAR [52.222-35](#), Equal Opportunity for Veterans (Sep 2010) ([38 U.S.C. 4212\(a\)](#));

(vi) FAR [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)).

(vii) FAR [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause FAR [52.222-40](#).

(viii) FAR [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

(ix) FAR [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

(x) FAR [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).

(xi) FAR [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. App. 1241](#) and [10 U.S.C. 2631](#)), if flow down is 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.125- 52.245-1 GOVERNMENT PROPERTY (APR 2012)**

(a) Definitions. As used in this clause-

"Cannibalize" means to remove parts from Government property for use or for installation on other Government property.

"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 item 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. Equipment does not include material, real property, special test equipment or special tooling.

"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-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

"Government property" means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

"Loss of Government property" means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to--

(1) Items that cannot be found after a reasonable search;

(2) Theft;

(3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or

(4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

"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, special test equipment or real property.

"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.

"Precious metals" means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Production scrap" means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, e.g., textile and metal clippings, borings, and faulty castings and forgings.

"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.

"Property Records" means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

"Provide" means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

"Real property" See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

"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.

"Unit acquisition cost" means-

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the Contractor's records that reflect consistently applied generally accepted accounting principles.

(b) Property management. (1) The Contractor shall have a system of internal controls 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 and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

(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, sale (as surplus property), or other

disposition, or via a completed investigation, evaluation, and final determination for lost 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.

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(c) Use of Government property. (1) 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.

(2) Modifications or alterations of Government property are prohibited, unless they are-

(i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

(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) 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"), is subject to the provisions of this clause. 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) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(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.

(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 property control operations.



(ii) Receipt of Government Property. The Contractor shall receive Government property and 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, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.

(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 (if required in accordance with the terms and conditions of the contract).

(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 items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss 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 of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property-related reports as directed by the Contracting Officer.

(vii) Relief of stewardship responsibility and liability. The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

(1) Date of incident (if known).

(2) The data elements required under paragraph (f)(1)(iii)(A) of this clause.

(3) Quantity.

(4) Accountable contract number.

(5) A statement indicating current or future need.

(6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

(7) All known interests in commingled material of which includes Government material.

(8) Cause and corrective action taken or to be taken to prevent recurrence.

(9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor

was or will be reimbursed or compensated.

(10) Copies of all supporting documentation.

(11) Last known location.

(12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when--

(1) Such property is 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;

(2) Property Administrator grants relief of responsibility and liability for loss of Government property;

(3) Property is 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

(4) Property is 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 material with material 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 of Government property 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, loss of Government property, and dispositions of material and equipment.

(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(s), systems, procedures, records, and supporting documentation

that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(h) Contractor Liability for Government Property. (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss of 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) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property 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 of Government property occurred while the Contractor had adequate property management practices or the loss 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 property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected 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 of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

(5) 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. However, the Government shall not be liable 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 or authorizing official.

(1) Predisposal requirements. (i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or 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.)

(2) Inventory disposal schedules. (i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report--

(A) Government-furnished property that is no longer required 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, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(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 in raw or bulk form;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) The Contractor shall provide the information required by FAR 52.245-1(f)(1)(iii) along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(3) Submission requirements. (i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

(iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.

(4) 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.

(5) 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.

(6) 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 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove 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 area 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.

(7) Disposition instructions. (i) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(ii) 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.

(8) 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.

(9) 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)(3) of this clause.

(k) Abandonment of Government property. (1) The Government shall not abandon sensitive 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) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

(4) 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.126 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.127 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.128 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.129 952.247-70 FOREIGN TRAVEL (JUN 2010)**

Contractor foreign travel shall be conducted pursuant to the requirements contained in Department of Energy (DOE) Order 551.1C, or its successor, Official Foreign Travel, or its successor in effect at the time of award.

**I.130 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.131 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.132 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012)**

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. The provisions of the clause at FAR 52.245-1, Government Property, apply to all property acquired under such authorization.

**I.133 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)**

(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. Surface Deployment and Distribution Command (SDDC) 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.134 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.

**I.135 952.204-75 PUBLIC AFFAIRS (DEC 2000)**

(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.

(b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

(d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.

(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

**I.136 952.204-77 COMPUTER SECURITY (AUG 2006)**

(a) Definitions.

(1) Computer means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.



(2) Individual means a DOE Contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) Access to DOE computers. A Contractor shall not allow an individual to have access to information on a DOE computer unless-

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and

(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) Written records. The Contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

(e) Subcontracts. The Contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

**Section J - List of Documents, Exhibits and Other Attachments****J.1 DOE-J-1001 LIST OF ATTACHMENTS**

The following attachments constitute part of this contract:

<b>Attachment</b>	<b>Description</b>
A-1	Introduction to NETL
A-2	Performance Work Statement
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), operated by the U.S. Department of Energy (DOE), Office of Fossil Energy (FE), helps provide clean, safe, affordable, and reliable energy to the American people. All of NETL's activities support the DOE mission to promote the national, economic, and energy security of the United States.

NETL is the only national laboratory owned and operated by DOE. NETL scientists and engineers conduct and manage research activities at sites in Pittsburgh, Pennsylvania; Morgantown, West Virginia; and Albany, Oregon. NETL also maintains offices in Sugar Land, Texas and Anchorage, Alaska. The innovations NETL and its research partners discover address a range of fossil energy challenges, including carbon dioxide capture, utilization, and storage; advanced coal processing; enhanced natural gas exploration and production; next-generation emissions controls; production of materials for extreme environments; and high-efficiency boilers, turbines, fuel cells, and other power systems. NETL also manages DOE projects that tackle emerging issues in clean energy, SmartGrid implementation, and ways to improve the reliability and efficiency of both existing and future power plant and electricity delivery systems.

About one quarter of NETL's 1,500 Federal and contractor employees engage in on-site research, solving problems that would otherwise become barriers to commercializing advanced power systems, fuels, and environmental and waste-management technologies. NETL research includes collaboration with many types of research organizations.

In addition to performing research on site, NETL applies its extensive technology-development and project-management capabilities to shape, fund, and manage off-site research throughout the United States and in more than 40 foreign countries. NETL's research portfolio includes more than 1,200 projects/activities, with a total award value of more than \$25 billion and private-sector cost sharing of nearly \$14 billion. To secure these projects/activities, 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 analyses to the policymakers responsible for setting direction and establishing research funds to ensure that America has a continuing supply of clean, affordable energy. NETL provides expert scientific and engineering analyses of technology options, developmental pathways, energy scenarios, and technical advancements; programmatic and socio-economic impact analyses and benefits appraisals; expert simulation and modeling using state-of-the-art systems; and analyses of energy systems infrastructure interdependencies, including policy implications.

NETL transfers many of its energy solutions into the commercial and educational arenas. Licensing agreements with large and small companies bring viable solutions to market, while internships and other educational programs bring renowned researchers together with students and faculty. Efforts include a speakers' bureau, visiting professor program, Adopt-a-School program, science bowls, in-school demonstrations, computer donations to area schools, and job shadowing for high school students. In addition, NETL-authored and -sponsored papers, presentations, publications, and conferences ensure that laboratory breakthroughs are shared openly with decision makers, stakeholders, and other researchers around the world.

#### **NETL Organization**

NETL is organized into six offices or centers, all of which report to NETL's Office of the Director:

- The **Office of Research and Development (ORD)** conducts research and development (R&D) in clean energy systems that are of critical importance to the nation; provides a "corporate R&D" function for DOE/FE programs; conducts long-range exploratory research; develops enabling science for energy technologies; innovates and invents new concepts; supports program, product, and new business development; initiates and conducts cooperative R&D with external partners; sponsors education and outreach; and provides unbiased technical evaluations. ORD scientists and engineers plan, manage, and implement R&D projects conducted on site to develop and verify novel concepts that could lead to new

technologies; participate in crosscutting technical teams; develop and maintain technical R&D core competencies through a program of skills development and training; design, construct, operate, and maintain NETL's R&D facilities; oversee site-support service contractor efforts in support of on-site research; coordinate the activities of research associates and visiting scientists using on-site R&D facilities; actively seek external partners for Cooperative Research and Development Agreement (CRADA) activities involving on-site facilities or research staff; and develop cooperative research opportunities with universities, other DOE laboratories, and other Federal laboratories and offices. The Office also implements and assures compliance with legislation and regulations pertaining to partnership development, technology transfer, and export compliance.

- The **Strategic Center for Coal (SCC)** works to ensure national energy security and economic prosperity through the production of clean, affordable electricity and fuels from coal, 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 its growing electricity demand.

The **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 constraints of producing oil and natural 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. SCNGO invests in projects that promise tangible benefits to the American people, including a cleaner environment and energy security.

- The **Office of Energy Project Management (OEPM)** harnesses expertise and talent for non-fossil energy research, development, and demonstration projects, including those with other Federal organizations. OEPM performs overall management and implementation of these customers' advanced initiatives, providing technical expertise, analytical tools, and a full suite of implementation skills.
- The **Office of Institutional and Business Operations (OIO)** plans, directs, and coordinates administrative, operational, construction, and support activities for NETL, including organization and human resource management; information technology management, maintenance, and implementation; on-site Environmental, Safety, Security, and Health program execution, compliance, and remediation activities; site management, including design, construction, operation, and maintenance of NETL facilities; security services; and real and personal property management. Functional and technical specialists within OIO participate individually or on teams to ensure timely information exchange, coordinate responses to action items affecting FE, and provide support to specific functional offices within DOE Headquarters.
- The **Office of Finance, Acquisition & Assistance (OFAA)** plans, directs, and coordinates NETL's Chief Financial Office functions including acquisition, assistance and management oversight of NETL's site-support contracts. OFAA develops and implements NETL's financial policies; performs budgetary planning, financial analyses, financial management, and administration services; performs acquisition and assistance services; plans, directs, and coordinates site-support contract management and project management compliance activities that crosscut NETL's operating units; develops NETL's comprehensive risk-management strategy, implements its comprehensive risk management program, and ensures the compliance of all operational, regulatory, and financial functions performed across NETL that are required in the execution of its risk-management program; manages the NETL performance measurement system; and conducts compliance reviews.

## NETL Budget

Figure 1 shows Fiscal Year 2014 NETL budget information. Non-FE funding comes from the Office of Energy and Efficiency and Renewable Energy, the Office of Electricity Delivery and Energy Reliability, and other Federal agencies.

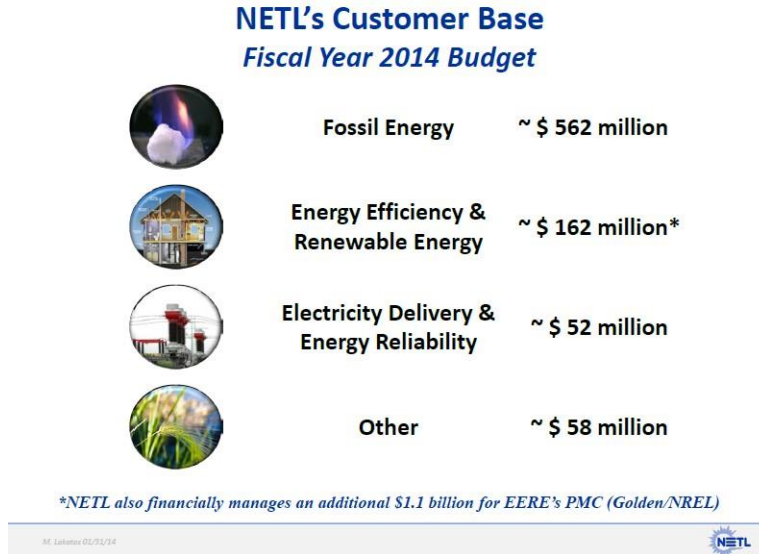


Figure 1. NETL Budget for FY 2014

**J.3 ATTACHMENT A-2 PERFORMANCE WORK STATEMENT**

**MISSION EXECUTION AND STRATEGIC ANALYSIS (MESA)  
FOR THE DEPARTMENT OF ENERGY'S (DOE)  
NATIONAL ENERGY TECHNOLOGY LABORATORY (NETL)**

**PERFORMANCE WORK STATEMENT (PWS)****I. PURPOSE**

The National Energy Technology Laboratory (NETL) requires Mission Execution and Strategic Analysis (MESA) services in order for the laboratory to fulfill its energy-related mission and, in turn, elements of the Department of Energy's (DOE) mission. These services are to provide quality and timely technical and associated administrative support services for program and project planning, execution, monitoring, and assessment; and for high quality, credible analyses of the entire economic value chain of energy, from resource assessment, extraction, and transport, to conversion, distribution, and end-use.

**II. CONTRACT STRUCTURE**

The Contractor shall perform work on a contract line item number (CLIN) basis. The contract will contain three (3) CLINs. Summaries of these CLINs are as follows.

CLIN 1 (Mission Execution) services will be comprised of technology, regulatory, and policy information research; energy and cost data review; technical writing; graphic design support; meeting planning and facilitation; technical proposal review; peer review planning and logistical support; roadmapping; project, portfolio, and program assessments; data management and process improvement; international activities support; and National Environmental Policy Act (NEPA) support.

CLIN 2 (Strategic Analysis) support requires expertise in the application of scientific, engineering, business, economic, energy market, and policy-related disciplines that result in highly credible studies and analyses. The required technical expertise encompasses high level scientific and engineering disciplines appropriate to address the changing U.S. energy outlook, as well as technology and system-specific engineering and market expertise required for expert analysis of alternatives. Expertise will be needed to address issues across diverse areas of national interest, incorporating broader energy-related initiatives involving both the government and the private sector.

CLIN 3 (Transition Activities) is to ensure the timely and efficient initiation of all contract services, including the transition of work being performed from the incumbent contractors to the successor contractor.

Under CLIN 1 and CLIN 2, the work scopes are also defined in terms of functional areas. These functional areas are as follows:

## CLIN 1 (Mission Execution)

- Program and Project Implementation
- Systems and Databases
- Assessments/Reviews/Evaluations
- Technical Information

## CLIN 2 (Strategic Analysis)

- Process and Cost Engineering
- Financial Analysis
- Life Cycle Analysis
- Economic, Market, and Regulatory Analysis
- Technology Deployment and Program Benefit Analysis
- Energy Infrastructure Analysis
- Subsurface Analysis

Collectively, these functional areas are aligned with multiple operational activities that are used to deliver high-quality, disciplined, and relevant research and technology development at NETL. The operational activities undertaken at NETL to ensure responsive and results-oriented research include, but are not limited to:

- **Strategic Planning** - Strategic planning is employed by DOE to set research priorities, focus resources, strengthen operations, ensure that employees and other stakeholders are aligned toward common goals, establish agreement concerning intended outcomes/results, and assess and adjust the organization's direction in response to a changing environment, e.g., regulatory.
- **Operational Planning** - NETL employs operational planning to ensure RD&D work being performed supports the Department's strategic goals and objectives. Operational planning includes allowances for funding opportunities in support of energy technology advancement and demonstrations, and establishment of milestones. It also serves as a basis for an operational budget and defines activities based on each fiscal year's budget. At NETL, operating plans are commonly developed as Annual Operating Plans (AOP) and complement multi-year program plans. Research activities and associated budgets for NETL organizational units, as well as extramural participants, are detailed in AOPs - in essence, the AOPs link strategic plans with organizational activities and resources.
- **Technology Roadmapping** - NETL undertakes technology roadmapping to identify critical technology gaps and technological solutions to make sound investment decisions. Technology roadmapping is especially important to NETL's programs because of the need to coordinate the development of multiple technologies that are pursued in parallel to solve national energy and environmental problems. Technology roadmapping at NETL generally involves identifying the product focus and critical system requirements, and associated targets. Technology drivers are specified in tandem with technology alternatives and timelines. As an outcome of roadmapping, a portfolio of technology alternatives to which DOE's resources should be directed is identified. NETL reviews and updates its roadmaps on a regular basis.
- **Acquisition Planning and Execution** - NETL issues multiple solicitations for cost-shared research, development, and demonstrations throughout a given fiscal year. In order to solicit for financial assistance applications, various procedures and activities are routinely followed. Key information is extracted, organized, and managed from the submitted applications, which are then evaluated in terms of technical approach, management capabilities, and other factors. This information must be managed and exercised such that a research portfolio is grounded in technical merit. Information from the applications, as well as reviewer comments, are routinely packaged into one or more briefings to the source selection official and possibly other Departmental officials, depending on the nature of the solicitation. It is imperative that schedules and procurement integrity are maintained throughout the solicitation process.
- **Program, Portfolio, and Project Review and Assessment** - As noted, NETL is responsible for more than 1,200 individual research and technology development activities. These projects, in turn, comprise technology portfolios and ultimately aggregate into the programs funded by Congress. The individual research activities supported by DOE have established budgets, milestones, technical and cost goals. Variance in terms of baseline costs, attainment of milestones, and advancements toward goals must be reviewed periodically in order to assess the effectiveness of a given research activity, as well as groups of projects, and a program as a whole. These reviews allow for issues to surface and be addressed, and for goals and targets to be modified as a function of complementary research findings. NETL also conducts reviews to adjust the focus or mix of a given portfolio, or to adjust program level goals as a function of market conditions, scientific breakthroughs, changing regulatory environments and evolutionary improvements to existing systems and technologies. These reviews ensure that public funds support relevant and timely research.
- **Technology Performance Assessment** - At NETL, energy-related technologies and systems are routinely and thoroughly assessed in terms of technical performance and cost competitiveness. Such assessments are necessary to isolate areas that must be improved (through research), identify cost drivers that must be addressed in order for a technology or system to become competitive, and to address system integration

issues. Greenhouse gas emissions and other environmental impacts are of particular interest to policymakers and investors alike. Professionals charged with completing these assessments must be knowledgeable and employ methods commonly utilized by industry to ultimately make investment decisions. Moreover, departmental staff must remain cognizant of technological advancements from around the globe in order to prudently invest taxpayer funds through the programs they manage.

- Outreach and Technology Transfer - NETL's communication efforts are extensive and include both general outreach and more focused technology transfer. To be effective, both types of communications must identify the target audience and develop messages and materials that are appropriate. Outreach refers to conveying both general information about the laboratory, specific information about NETL programs, and informing decision makers and the public on energy-related technologies, processes, and environmental and economic impacts. Technology transfer refers to transferring the scientific findings of one organization or research team to another for the purpose of further development and commercialization. Beyond the disclosure of new data, analytical methods, and technical and cost performance information for energy related systems, technology transfer may include aspects of patenting and copyright, as well as licensing and commercialization strategies. Outreach and technology transfer is a priority at NETL given the organization's extensive research and technology development programs.
- Project Control and Oversight – Effective management of a large portfolio of RD&D projects requires ongoing acquisition and active management of key data elements. Baseline data, e.g., monthly milestone and cost schedules, are needed to establish baseline profiles to which actual profiles can be tracked. Proactive management of third party research and technology development activities allows early identification of potential issues – and resolution thereof – such that issues don't compound possibly inhibiting successful completion of a given project. Additionally, interim findings and other results must be dynamically managed so that adjustments to the overall portfolio can be effected in order to realize program goals. Ensuring the availability of quality data sets and research reports is also an oversight function that is essential to public domain information.
- Environmental Review - Environmental compliance activities at NETL are to assure that the Department's proposed actions (research and technology development and demonstration) comply with the requirements of NEPA and related environmental review requirements (e.g., National Historic Preservation Act, Endangered Species Act, Fish and Wildlife Coordination Act, and others) that are necessary prior to project implementation. In general, environmental review at NETL employs a systematic, interdisciplinary approach to make an informed decision on the environmental impacts of NETL-sponsored RD&D. Review of a given project may be as straightforward as completing an environmental questionnaire leading to a categorical exclusion to a more complex situation in which an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required. The Government does not anticipate services which would require the contractor to complete EAs or EISs.
- Proposal Review - A significant percentage of the energy-related portfolios for which NETL has responsibility is comprised of research and technology development and demonstrations conducted extramurally. That is, NETL sponsors RD&D that is selected competitively and performed by multiple partners. Through NETL, the DOE funds relevant research at universities, national laboratories, not-for profit institutions, and industry. NETL issues multiple funding opportunity announcements each year to advance the laboratory's mission, assemble the most prudent portfolio of research, and to advance technologies. In response to these funding opportunity announcements, scores of applications are received at NETL, which must undergo comprehensive technical evaluation. Therefore, the contractor will be required to support the research proposal review process and provide qualified staff to evaluate complex technical subject matter and clearly articulate the strengths and shortcomings of proposals.



### III. CLIN #1, MISSION EXECUTION

#### 1.0 INTRODUCTION

The services to be delivered under CLIN #1 (Mission Execution) shall support effective and efficient execution of programs and projects at NETL. A *program* is an organized set of ongoing activities directed toward a common purpose or goal undertaken in support of an assigned mission area. Typically, a program is a group or portfolio of related projects, managed in a coordinated way to accomplish broad goals over some period of time to which individual *projects* contribute. Depending on the Technology Readiness Level (TRL) of a given technology, the associated timeline to develop technology from laboratory scale study to a pilot or full scale demonstration level may range from three to five years upwards to ten to fifteen years. Requirements, governing regulations, internal and external stakeholders, implementation strategies, and many other factors that influence NETL's mission vary among the research programs, thus affecting the time required for conducting qualified demonstrations. Research program initiatives are national in scope and emphasize partnerships with private industry, academia, state governments, not-for-profits, and other stakeholders to advance the knowledge base and develop technological solutions to national energy and environmental problems. NETL also contributes to the Department's international initiatives; hence, some work under CLIN 1 (and CLIN 2) may have an international focus. As with NETL's national focus, any support services required of the contractor regarding international engagements will be communicated during annual planning efforts.

Activities for this CLIN focus on program initiatives and the project portfolios under the direction of the NETL Office [refer to NETL Organization in Section J.2, Attachment A-1 above] that supports the sponsoring organization, which include the Department of Energy's Offices of Fossil Energy, Energy Efficiency and Renewable Energy, and Electricity Delivery and Energy Reliability.

#### 2.1 FUNCTIONAL AREAS

The contractor shall safely and efficiently deliver Mission Execution services in support of NETL. Changes in programmatic support to meet changing needs may substantially increase or decrease the levels of and types of support services reflected in the annual operating plan. The primary functional areas under this contract are:

- Program and Project Implementation,
- Systems and Databases,
- Assessments/Reviews/Evaluations, and
- Technical Information.

#### 2.2 Program and Project Implementation

##### 2.1.1 Background

Applied research and technology development focused on key barriers to commercialization requires a structured framework – a framework that NETL routinely employs. Information reflecting the progress of individual research activities in meeting their established objectives to addressing technical limitations at a program level is developed, tracked, updated, and reported as part of NETL's management protocols. In addition, NETL develops technology transfer and outreach materials in order to effectively communicate with its various stakeholder groups.

##### 2.1.2 Activities

Services may include, but are not limited to, the following:

- a) Ensure compliance with mandated reporting requirements related to performance and program management within DOE, e.g., the Government Performance Results Act. Areas of support will include periodically gathering needed data from program managers, project managers, and principal investigators; verifying the data; converting the data into the form required for the various reporting systems; and completing reports and presentation materials that are required in a timely manner.

- b) Coordinate program and project-related meetings. Assist in various logistical activities including planning the agenda and arranging speakers and invitations. Develop technical content for presentations. Provide meeting facilitation services and reporting on meeting outcomes.
- c) Provide technical expertise to support federal staff and other program officials in planning program initiatives, evaluating alternative approaches to meeting program goals, and ensuring technical excellence with technology portfolios.
- d) Conduct high quality program and project peer reviews. Effort shall include: (1) logistical and administrative support, including organizing data from reviewer assessments and developing reports and analysis for NETL management; (2) identifying and arranging for the participation of independent technical experts to serve as reviewers; and (3) meeting facilitation and report out.
- e) Participate in proposal review and evaluation processes. Provide proposal reviews by subject matter experts. Assess or review the environmental impacts of proposed research and technology development efforts.
- f) Conduct assessments and develop recommendations to enable continual improvement of program and project management practices at NETL. Compare program and project management practices at NETL with practices at best-in-class institutions. Assess consistency of procedures within NETL. Identify opportunities to improve and make recommendations to NETL management. As requested, develop implementation plans, training materials, and best-practices guidelines for program and project management.
- g) Complete assessments to ensure that NETL is in compliance with Environmental Safety and Health (ES&H) programs, policies, and procedures. Brief NETL management and identify areas where changes need to be made. Study best practices and make recommendations to NETL management for ways to improve the efficiency and effectiveness of ES&H procedures at NETL. Provide support to implement approved changes, including developing training materials.
- h) Develop and employ procedures to ensure the security of valuable and sensitive information contained within NETL as a part of program and project management. Specifically provide support to prevent unauthorized release or unapproved transfer of sensitive information to U.S. or foreign entities. Conduct export compliance determinations and licensing. Prepare technology-specific risk assessments for the NETL Safeguard and Security Awareness Program. Develop appropriate export compliance training materials and provide training.
- i) Process information to ensure compliance with the National Environmental Policy Act (NEPA) for NETL-funded technology development and validation projects. Prepare reports and manage data and information to support NETL's comprehensive and efficiently managed environmental compliance program. Screen environmental questionnaires for administrative completeness, solicit additional information from federal project managers as needed, track and provide quality reviews of categorical exclusions. As requested, coordinate and support public scoping meetings, public hearings, and other public forums. [The contractor will not be tasked with conducting EA's or EIS's.]
- j) Inform NETL staff of technology and policy developments that are relevant to NETL program areas. Assist in arranging, organizing, and conducting conferences and topical training sessions on emerging energy issues. Attend technical conferences, seminars, workshops, etc. and brief NETL staff on matters of programmatic and organizational relevance.

## **2.2 Systems and Databases**

### **2.2.1 Background**

Maintenance, enhancement, and use of commercial software, as well as customized databases and information processing systems are necessary to conduct and manage the research at NETL. Therefore, the organization

routinely compiles, analyzes, and prepares reports derived from extensive technical data such as the operational performance of a given energy conversion system and project management information such as individual activity milestones, schedules, and costs in order to efficiently implement its energy-related research and technology development program.

### **2.2.2 Activities**

Services may include, but are not limited to, the following:

- a) Populate and exercise various databases, models, and analytical tools used to assist in efficient implementation of the technology programs being managed at NETL. The contractor shall populate the systems, exercise the systems, and conduct analyses to inform NETL management of relevant issues or trends.
- b) Program changes within the tools, or develop mid-ware products that improve the efficiency of the program and project management processes at NETL or that accommodate changes in performance requirements.

## **2.3 Assessments/Reviews/Evaluations**

### **2.3.1 Background**

Reviewing the scientific merit of individual research activities, comparing the technical and cost performance of technology advancements, and scrutinizing portfolios of related RD&D activities are routine activities at NETL. The resultant outcomes are used to develop defensible recommendations affecting continued support to a given research activity and to affirm or alter the direction of future RD&D.

### **2.3.2 Activities**

Services may include, but are not limited to, the following:

- a) Perform cursory reviews of technical studies and technology/project reports and develop summaries thereof.
- b) Assess selected research and/or technology development and demonstrations. Compile, develop, and report data that reflect progress toward goals, objectives, and milestones; recommend approaches to enhance performance, as applicable; conduct site visits to validate accomplishments; and generate records.
- c) Conduct portfolio assessments of program elements to quantify the technical risk of achieving program goals and to identify areas of vulnerability. Build portfolio models, elicit needed information from program and project managers, exercise the portfolio model to identify relevant information about the portfolio of elements, develop presentation slides, and report to communicate the methodology and results to managers within NETL.
- d) Perform situational analyses that identify factors external to NETL that have the potential to adversely or positively affect projects and programs managed by NETL. Such external factors include: (1) alternative technologies or systems that provide the same service or function as technologies funded by NETL; and (2) environmental regulations or energy-related policies. Identify and evaluate possible courses of action to minimize/enhance the impact and progress toward the program goals.
- e) Conduct post-project assessments of selected technology development projects and demonstrations. Identify advances and the impact of those advances on commercial products. Identify and document lessons learned.

## **2.4 Technical Information**

### **2.4.1 Background**

Staying current with energy-related advancements is routine at NETL and represents a key aspect of due diligence, underpinning the investment of public funds. Technology performance, associated costs, and regulatory and environmental impacts information are considered across NETL's programs and employed to support multiple operational activities, e.g., program review, strategic planning, and technology transfer.

### **2.4.2 Activities**

Services may include, but are not limited to, the following:

- a) Generate information and data to support the development of program plans for programs implemented at and supported by NETL. A program plan describes the areas of technology development that comprise a program. It sets forth the program goals and describes the different activities that support each goal. A program plan highlights accomplishments achieved thus far (for an established program) and describes the national benefits that will be realized if the program goals are realized. The contractor shall elicit needed information about the technology development efforts, certify and analyze the information received, and develop the text and graphical elements that make up the program plans.
- b) Conduct research and prepare information products to support responding to questions about programs and projects managed by NETL. These questions may be received from staff at DOE headquarters, Congressional staff, and other third parties. They are often quick turn-around and require a response in a few days or hours.
- c) Conduct research and analysis and develop text and graphical elements that describe programs and projects managed at NETL. The communication content will be used for fact sheets, web sites, presentation materials at technical conferences, email newsletters, and other communication products.
- d) Prepare background technical information (*e.g.*, literature reviews, white papers, etc.) in support of the acquisition process.
- e) Develop general outreach products and prepare narrative, technology visualization materials, and tools for internal and external stakeholders, including on-demand, short notice, detailed presentations, technical brochures, and video productions.

## **IV. CLIN #2, STRATEGIC ANALYSIS**

### **1.0 INTRODUCTION**

The services to be delivered under CLIN #2 (Strategic Analysis) shall support NETL analytical efforts that assess advanced energy technologies, guide and evaluate RD&D programs, and inform strategic planning, multi-year program planning, and business development activities. The management and execution of these services will require an interdisciplinary personnel mix having technical expertise in scientific, engineering, economic, business, and policy disciplines needed for in-depth understanding and analysis of the energy-economic system of the United States, conventional and advanced energy technologies, and energy-related regulatory, legislative, and policy issues. The funding for the activities under this CLIN would come from various sources, such as, but not limited to, the DOE offices of FE, OE, and EERE. Additional funding may come from non-DOE sources.

### **2.0 FUNCTIONAL AREAS**

The analytical activities are described in the following functional areas where NETL seeks to bolster the advancement of current programs, support the development of future program initiatives, and provide services to a

broad array of stakeholders. Within these functional areas, the contractor support services will complement and enhance efforts of NETL's federal staff and support NETL management.

In addition, when required the contractor shall support NETL in responding to high priority requests that demand immediate attention. Upon request by NETL, the contractor shall provide appropriate expert resources, such as technical, business, economic and computer modeling experts, as required for supporting quick-turnaround responses. This expertise may be drawn from dedicated on-site resources applied to other ongoing activities or from the contractor's expert resources that are not engaged on a full time basis.

CLIN #2 comprises the following functional areas:

1. Process and Cost Engineering
2. Financial Analysis
3. Life Cycle Analysis
4. Economic, Market, and Regulatory Analysis
5. Technology Deployment and Program Benefit Analysis
6. Energy Infrastructure Analysis
7. Subsurface Analysis

### **2.1 Process and Cost Engineering**

The contractor shall provide process and cost engineering to support NETL in guiding RD&D programs for energy conversion and environmental control technologies and in performing other activities ancillary to its core RD&D mission, as defined in the annual operating plan.

#### **2.1.1 Background**

DOE funds and continuously guides and evaluates RD&D of technologies for conversion of fossil fuels and related environmental control technologies. A significant portion of this RD&D is currently focused on technologies for electric power generation and the mitigation of greenhouse gas emissions. Technologies of interest fall across the full spectrum of technology readiness levels (TRLs), from emerging lab-scale concepts to fully commercialized conventional technologies. NETL conducts component-level and plant-level process and cost engineering analyses to assess the current and potential environmental and economic performance of these technologies, and compares them with existing and competing technologies and/or relevant RD&D goals.

In addition to power generation, technologies undergoing RD&D may have application to: conversion of fossil fuels (coal, natural gas and/or crude oil) for co-production of fuels and/or chemicals, co-conversion of multiple fossil fuels or fossil fuels and biomass, capturing carbon dioxide and other greenhouse gases from non-power sources, and beneficial use of carbon dioxide.

#### **2.1.2 Activities**

Analyses and services may include, but are not limited to, the following:

- a. Assess the performance of integrated energy conversion systems containing commercial and/or novel technology components primarily via zero-dimensional, steady state, thermodynamic process models using process simulation and thermal engineering software that can be commercially licensed from companies such as AspenTech, Thermoflow, and Chemstations.
- b. Estimate the cost of integrated energy conversion systems containing commercial and/or novel technology components via detailed estimates of capital costs, operation and maintenance costs, owner's costs, finance costs and other project development costs. Apply and adapt authoritative cost engineering and cost estimation practices and standards, such as those issued by the AACE and Electric Power Research Institute.
- c. Estimate the economic performance of conventional and advanced technologies using detailed discounted cash flow analysis to evaluate metrics such as the cost of production (e.g., cost of electricity), required selling price of product and internal rate of return on equity. Applying alternative methods of analysis, such as those incorporating real options analysis, may also be required.

- d. Assist in collaborating with NETL-sponsored intramural and extramural researchers to perform analyses that: 1) screen component technologies for their potential to achieve R&D goals in the context of an integrated system; 2) identify the process conditions a component technology will face in an integrated system; 3) identify component-level cost and performance targets; and 4) identify which component parameters are critical to achieving those targets with an objective to formulate research and testing plans that save time and resources.
- e. Utilize optimization techniques to systematically assess optimal configurations for integrated advanced energy systems in lieu of reliance on *a priori* assumptions and traditional sensitivity cases.
- f. Summarize, review and/or critique R&D and demonstration projects from a process and cost engineering perspective. For demonstration projects, assess the degree of completeness of engineering effort and provide an independent estimate of the accuracy of the estimate. For all RD&D efforts, provide process and cost engineering input to proposal reviews and to project interim and final report reviews.
- g. Assess technical and economic risks associated with RD&D. For major demonstration projects, identify and characterize “first of a kind” (FOAK)-type risks (technology, cost and project execution) associated with such a project and offer recommendations on how to mitigate the risks that offer the greatest impact.
- h. Support development of RD&D goals and identification of gaps in RD&D plans and/or opportunities for new RD&D. Monitor the progress of advanced technology components and integrated systems toward meeting RD&D cost and performance goals. Develop analytical frameworks to set metrics for, and critique the potential of, novel technologies to contribute to RD&D goals.
- i. Support DOE program planning through analyses of engineering issues and test plans associated with transitioning advanced technologies across lab, pilot, and commercial scales.
- j. Summarize, review, and/or critique third-party cost and performance assessments of energy conversion systems. As needed, adjust cost estimates from diverse sources into a comparable format.
- k. Revise and expand NETL’s series of Quality Guidelines for Energy System Studies, as directed.

## 2.2 Financial Analysis

The contractor shall, as requested by NETL, provide financial analysis expertise and support NETL in the evaluation of the financial viability of RD&D projects.

### 2.2.1 Background

For the past 25 years, DOE has been co-funding medium- and large-scale demonstrations of clean coal technologies to hasten their adoption into the commercial marketplace. These demonstration projects are implemented as cost-shared partnerships between the Government and industry. Successful execution of these types of projects typically requires significant private sector investment, often secured through private equity and debt financing with Federal Government financial support needed to help reduce or mitigate the risks inherent in these first-of-a-kind projects.

In addition, NETL conducts comparative economic analyses of hypothetical commercial and advanced energy conversion systems for conversion of fossil fuels to power and/or fuels/chemicals. These analyses require use of detailed discounted cash flow models and market-based financial assumptions such as internal rate of return for the equity portion of the investment (IRROE), debt to equity ratios (D/E), and cost of debt.

### 2.2.2 Activities

Requested analyses and services may include, but are not limited to, the following:

- a. Review and assessment of RD&D project recipients’ *pro forma* funding plans and financial models. Review elements would include: 1) assessment of cost estimate completeness; 2) assessment of quality and comprehensiveness of project financial model; 3) identification of key financial assumptions and the reasonableness of their basis; 4) assessment of robustness of the financial model, including identification of and model sensitivity to parameters of primary importance; 5) assessment of the proposed financial structure; and 6) identification of typical and atypical risks, their associated allocations, and any key gaps that could impact the recipient’s ability to secure significant debt and equity financing.
- b. Recommend appropriate project finance structures for different types of energy projects across various market and risk scenarios for use in NETL process and cost engineering assessments.

- c. Maintain NETL's Power Systems Financial Model, utilize it where applicable, and offer suggestions for improvement.

### **2.3 Life Cycle Analysis**

The contractor shall provide support analyses that include (but are not limited to): life cycle assessment (according to ISO 14040/14044 and draft ASTM Standard E06.71.10) and life cycle costing of existing and future energy technologies for power and/or fuels production; and natural resource extraction, processing, transportation, and end use.

#### **2.3.1 Background**

NETL uses Life Cycle Analysis (LCA) as a tool and framework for evaluating the advantages and disadvantages of energy technology and policy options on a common basis. LCA includes the impacts of converting fuel to useful energy, infrastructure construction, extraction and transportation of fuel, and transport of the final energy product to the end user. LCA products are used by NETL to inform and defend RD&D programs, baseline energy system technologies, advance the understanding of technology advantages and challenges from a life cycle perspective, and identify opportunities for R&D innovation. NETL's LCA work has been used in briefings to congressional staff and has been cited by several external stakeholders, including the U.S. EPA and the National Academy of Science.

#### **2.3.2 Activities**

LCA will be required to evaluate the environmental and economic consequences resulting from a process, product, or a particular activity over its entire life cycle, extending from the acquisition of raw materials, through productive use, and finally to either recycling or disposal. The objective is to support enhancement of LCA capabilities conducted within NETL through improvements and expansion of existing NETL unit process and life cycle models, enhancements in methods to effectively communicate LCA results, and outreach efforts to improve the use and application of analysis results conducted at NETL.

The contractor shall support federal staff in the development of attributional and consequential life cycle analyses. Services include (but are not limited to): literature searches, evaluation of existing life cycle studies, data development and collection and organization, development of cost and environmental life cycle models and tools, development and application of impact assessment characterization methodologies (both mid-point and end-point impacts), and sensitivity and uncertainty analysis.

Parameters that NETL typically seeks to quantify in LCA studies include, but are not limited to: criteria air pollutants, greenhouse gas emissions, and other air emissions (e.g., mercury, ammonia, radionuclides); solid waste streams, raw materials, water use, land use, and life cycle costs.

Requested analyses and services may include, but are not limited to, the following:

- a. Identifying, collecting, and analyzing publicly-available data to characterize existing operations and collaborating with industry experts and relevant stakeholders to ascertain the best available data to characterize each operation.
- b. Developing and using environmental life cycle assessment models capable of managing and analyzing life cycle inventory data (e.g., dynamic unit process models, impact characterization factors, data uncertainty properties, and study results).
- c. Identifying environmental impacts to the biosphere caused by primary, secondary, or tertiary operations across the life cycle of energy technologies and developing impact characterization methodologies and factors to assess the potential benefits and drawbacks of such environmental interventions.
- d. Identifying knowledge gaps in existing life cycle related data necessary to support decision-making processes, such as, but not limited to, technology selection for research and development, public awareness, and policy guidance.
- e. Effectively communicating the quality of life cycle analyses based on existing data limitations to ensure proper use of study results.

- f. Collecting primary data through interviews, surveys, and site visits to improve quality of existing unit process data to increase the accuracy and utility of study results.
- g. Developing custom life cycle cost models capable of aggregating a broad range of cost information into a comparable platform to calculate and report results. Models shall be capable of reporting a broad range of cost metrics relevant to the power technology, fuels production, and financial investment communities.
- h. Assessing the uncertainty of life cycle analysis results based on the temporal, geophysical, and technical applicability of data to stated study goals and scope. Uncertainty of data relevant to collection precision and/or accuracy shall also be captured and assessed to evaluate study quality.

#### ***2.4 Economic, Market and Regulatory Analysis***

The contractor shall, as requested by NETL, provide economic, market, and regulatory analysis to support NETL in guiding, evaluating, and justifying RD&D programs and in performing other activities ancillary to its core RD&D mission.

##### **2.4.1 Background**

NETL makes use of economic, market, and regulatory analysis to inform strategic planning, review policy proposals, provide situational analysis of energy markets and trends, and identify new opportunities for research.

##### **2.4.2 Activities**

Requested analyses and services may include, but are not limited to, the following:

- a. Analyze international and national energy and economic trends that impact the availability and progress of fossil-fuel based technology.
- b. Analyze fuel, feedstock, and/or product markets (e.g. coal, natural gas, crude oil, electric power, fuels, chemicals, carbon dioxide utilization, and other energy conversion by-products). Analyses may require an understanding of the interplay between the various markets and opportunities for niche and widespread application of energy conversion processes using advanced technologies.
- c. Analyze electricity markets, particularly with respect to the valuation of generation and transmission assets, under varying regulatory and market conditions.
- d. Perform market assessments for energy-related technologies of interest to NETL management. Analyze the industrial base, and availability and cost of associated factor inputs.
- e. Analyze the technical and economic implications of proposed legislation and regulation affecting the energy industry, energy technologies, and the economy of the United States.

#### ***2.5 Technology Deployment and Program Benefit Analysis***

The contractor shall, as requested by NETL, provide macroeconomic, technology deployment, and program benefit analysis to support NETL in guiding, evaluating, and justifying RD&D programs and in performing other activities ancillary to its core RD&D mission.

##### **2.5.1 Background**

NETL conducts engineering and macroeconomic analyses using regional or national data to estimate the benefits of RD&D programs under different scenarios by forecasting the deployment of advanced technologies in competitive markets and their associated impacts on the economy, the environment, and energy security. Benefits analyses evaluate and forecast how the decisions of private sector entities will be influenced by various market, regulatory and policy scenarios, and also by projected improvements in the cost and performance of systems that contain advanced technologies. NETL's technology deployment and program benefit analysis effort currently involves the use of the National Energy Modeling System (NEMS), MARKet ALlocation (MARKAL) model, and other externally and internally developed models and tools to forecast market penetration of energy technologies, as well as the use of post-processing analysis tools to calculate additional economic, environmental, and energy security benefits. Most efforts are focused on U.S. markets; international markets are less frequently addressed.



### 2.5.2 Activities

The contractor shall support NETL in developing credible forecasts of energy technology deployments across various markets, and evaluating associated benefits attributable to related RD&D programs.

Requested analyses and services may include, but are not limited to the following:

- a. Application of the methodologies and adherence to the guidelines pertaining to conducting federal economic analyses, such as those contained in Executive Order 12866 and OMB Circular A-4.
- b. Installation of NEMS, MARKAL and other models and tools as requested on both federal and contractor network systems.
- c. Assessment of published systems analyses to develop necessary technology cost and performance inputs for NEMS, MARKAL and other models and tools as requested.
- d. Exercising NEMS, MARKAL and other models and tools as requested to develop analyses and evaluations of DOE programs.
- e. Evaluation of NEMS, MARKAL and other models and tools as requested in order to identify and analyze source code, variables and parameters of interest. Designing and implementing modifications to, and new capabilities in, NEMS, MARKAL and other models and tools as requested to better characterize the representation of technologies of interest, and to facilitate integration across models.
- f. Gathering data and conducting analysis of potential export market opportunities and related benefits for technologies of interest using credible methodologies and models (such as EIA's World Energy Projection Systems model).
- g. Application of econometric analysis, as applied to cross sectional, time series, and panel data, in order to formulate credible functions to be used to parameterize NEMS, MARKAL and/or other models and tools as requested, as well as to perform stand-alone analysis of varying components of the energy sector.
- h. Development of new modeling capabilities representing various components of the energy economy using techniques such as net present value analysis, discounted cash flow analysis, and profit-maximization or cost minimization in a linear, non-linear, mixed integer, or dynamic programming context.
- i. Performing economic impact analysis at the national, regional, state and local levels using credible input-output models and methods (both linear and econometric) in order to quantify economic impacts of technology deployments.

### 2.6 Energy Infrastructure Analysis

The contractor shall provide analytical expertise for energy infrastructure analysis across the energy value chain. This would include the gathering, transportation, storage, and processing of primary energy products, their conversion into products and associated by-products, and the ultimate consumption/use of products and byproducts. Analysis would include, but not be limited to, the national electric power grid, transportation of energy commodities (e.g., pipeline, rail, barge, etc.), and end use such as heating and cooling, industrial processes, and other purposes.

#### 2.6.1 Background

The nation's energy delivery systems are undergoing significant changes as a result of key drivers. First, the approach to generation, delivery, and consumption of electric power is undergoing changes motivated by the desire for affordable, reliable, clean and secure electric power. In some cases, federal and state governments have passed legislation and goals which accelerates these changes (e.g., renewable portfolio standards, clean energy standards, mercury and air toxics standards, and reliability standards). As a result, the electric power system is shifting to incorporate more distributed generation, variable renewable resources, energy storage, smart grid technologies, electric vehicles, and end use devices capable of price-driven demand response. These motivators have stimulated transformative changes in every sector of the energy delivery systems such as: greater automation and complex control schemes to manage the increased sources of variable energy sources; changing dispatch profile within the bulk electricity generation fleet; and integration of distributed generation, energy storage, and load-control devices.

Also, development of natural gas shale plays is impacting all parts of the energy sector. For instance, the opportunities to create low-carbon generation and transportation options based on natural gas are driving the vision

of realizing U.S. energy independence. These trends demand focused analysis to prioritize investments in technology development and deployment.

The need for new technologies touches all aspects of the energy sector to manage the increased complexity of these energy delivery systems while maintaining societal goals of sustainable, affordable, reliable, clean, and secure energy sources.

### 2.6.2 Activities

Analyses will be required across all sectors of the energy delivery systems including electricity, natural gas, petroleum, and water. Fundamentally, expertise will be required to assess current and future trends regarding modernizing all segments of the national Smart Grid; pipeline transportation infrastructure for natural gas, petroleum and their products; bulk commodity transportation systems including rail and commercial waterway, pipeline infrastructure for carbon dioxide; and these sectors' associated and interdependent systems.

Requested analyses and services may include, but are not limited to, the following:

- a. Assessing electric power systems, including, but not limited to: generation, transmission, distribution, and customer assets. The grid assets include, but are not limited to: centralized and distributed generation and energy storage; transmission and distribution lines and substations; and customer generation, energy storage, and end-use devices. Requested analyses are anticipated to be assigned to the following two categories:
  1. Performing analyses on the current infrastructure and forward-looking analyses of a modern grid, generally concentrating on fossil energy resources to gain a better understanding of how a modern power system will impact the use of fossil energy resources for electric power generation. Examples would include:
    - i. Evaluating potential of clean coal, natural gas, and biomass technologies to produce power and other products within a modern grid.
    - ii. Evaluating ancillary grid services that could be served by coal and natural gas plants.
  2. Assessing the challenges associated with transitioning to a modern grid to assess the fundamental changes to the way in which the electric power industry, its regulators, and its customers will plan, design, operate, maintain, and interact with the electric power system including its generation, transmission, distribution, and consumer assets. Examples would include:
    - i. Developing cost, benefits, and business case information, including use of data from smart grid field projects.
    - ii. Evaluating impacts of transition to a modern grid on electric power consumption; peak load reduction; operations and maintenance; voltage/VAR and frequency control; reliability, including outage management; power quality; costs; and environmental impacts.
- b. Tracking robust performance trends on the electric power system, including but not limited to, costs, consumer bills, wholesale and retail prices, environmental emissions, reliability indices, load profiles, power quality, and energy efficiency.
- c. Tracking robust trends for changes in installation and usage of assets of the electric power system, including but not limited to, generation mix, generation capacity and utilization, centralized and distributed assets, energy storage capacity and utilization, and smart grid technologies and their applications.
- d. Evaluating impacts of existing and proposed legislation on electric power industry.
- e. Examining the interplay of coal, natural gas, and oil resources with other energy resources including nuclear, solar, wind, geothermal, hydropower, and other unconventional energy resources. The analyses may include examination of the integration of the energy infrastructure with other infrastructures including transportation, communication, and water.
- f. Performing analyses on natural gas and petroleum systems, including but not limited to, assessment of costs and benefits, reliability, distribution optimization, environmental impacts, security, and resiliency. The transmission and distribution pipeline systems could include, but are not limited to, discovery, processing, transmission, and distribution assets. These assets include, but are not limited to, storage, transmission, and distribution pipelines. Analysis could be conducted on current infrastructure, siting, and planning infrastructure expansions to meeting shale gas plays, markets, and energy sector interdependencies.

## 2.7 *Subsurface Analysis*

The contractor shall provide geological and petroleum engineering expertise to support NETL in guiding and evaluating RD&D related to subsurface storage of carbon dioxide, exploration and production of unconventional energy resources (e.g., oil, natural gas, coal bed methane, methane hydrates), subsurface energy storage, assessment of mineral resources used in energy conversion, and in performing other activities ancillary to its core RD&D mission.

### 2.7.1 **Background**

NETL sponsors and conducts research in several areas that will require geologic analytical support, including, but not limited to:

a. *Exploration and Production of Unconventional Oil & Natural Gas Resources:*

Oil and natural gas are the lifeblood of our economy, accounting for more than sixty percent of the primary energy consumed in the United States. Part of NETL's mission is to help ensure that affordable supplies of domestic natural gas and oil are available in the U.S. for decades to come, including supplies from unconventional resources. However, recovery of these unconventional resources is becoming increasingly complex and expensive, and must be accomplished in environmentally responsible ways. NETL's R&D and field demonstration projects are designed to: enable domestic oil and natural gas supplies through advanced exploration and production technology, including deep water technology and enhanced oil recovery with carbon dioxide; examine water related concerns; investigate potential new energy resources such as methane hydrates; and quantify and mitigate the environmental and safety risks of exploration and production activity.

b. *Geologic Storage of Carbon Dioxide:*

NETL has a major RD&D program in the area of carbon dioxide (CO<sub>2</sub>) storage which encompasses geologic reservoir characteristics and behavior, as well as the costs which ensue from storage projects. The RD&D program includes on-shore and off-shore geologic sites which are capable of storage only, as well as sites which involve CO<sub>2</sub> enhanced oil recovery (EOR) in conjunction with storage operations. To date, detailed costs models have been developed at NETL which estimate the various costs of undertaking both storage and joint EOR/storage projects based on available data and models. Analysis in these areas may require geologic data assembly and interpretation, reservoir modeling, cost estimation, familiarity with regulations and permitting processes, and an understanding of leasing and other transaction costs. The contractor will also likely be required to assist NETL in the maintenance, improvement, and utilization of NETL's existing suite of detailed CO<sub>2</sub> storage cost models.

### 2.7.2 **Activities**

With regard to exploration and production of unconventional oil and gas resources, analyses may include, but are not limited to, the following:

- a. Evaluating the economic supply of unconventional natural gas, and exploring scenarios for the expanded use of natural gas.
- b. Interpreting and documenting the relationship between recovery efficiency and well economics, and therefore the nature of industry incentives for incremental improvements in recovery efficiency.
- c. Gathering information on R&D being performed on the subjects of recovery efficiency and environmental protection by the oil and gas industry, to potentially include studies of current conditions as well as retrospective studies of industry and government contributions related to the entry of new resource elements.
- d. Developing regional price/supply projections for unconventional natural gas (shale gas and coalbed methane) by combining publicly available geologic assessments of unconventional gas resources with assessments of production decline trends and up-to-date modeling of finding and development costs.

- e. Determining minimum gas prices along with levels of drilling, production facilities, natural gas plants, pipelines, and storage facilities required to satisfy scenarios involving various levels of natural gas consumption.
- f. Geologic modeling and numerical simulation of tight oil and shale gas horizontal completions in order to determine methods of optimizing the recovery efficiency. These types of reservoirs have historically low recovery factors on the order of 10 percent to 20 percent.
- g. Geologic modeling and numeric simulation of mature oil fields undergoing CO<sub>2</sub> enhanced oil recovery using next generation technologies in order to determine technical performance and conduct cost/benefit analyses.
- h. Developing detailed cost estimates for all aspects of oil and natural gas exploration and production.

With regard to underground CO<sub>2</sub> storage (and joint EOR/storage operations), analyses may include, but are not limited to, the following:

- i. Developing detailed cost estimates for all aspects of a CO<sub>2</sub> storage project, modeling of economic performance, and calculation of key economic metrics (e.g., required storage price per tonne of CO<sub>2</sub> to realize a specified financial performance).
- j. Developing detailed cost estimates for all aspects of pipelines for transporting CO<sub>2</sub>, oil and natural gas.
- k. Estimating geographically heterogeneous leasing and transaction costs associated with CO<sub>2</sub> storage and CO<sub>2</sub> EOR/storage projects, to include items such as right of way acquisition costs, pore space or mineral lease-related negotiation costs, and general land-related negotiation costs.
- l. Applying federal and relevant state regulations to the design of systems to store CO<sub>2</sub> and recover subsurface energy resources.
- m. Applying financial responsibility instruments under EPA UIC Class VI regulations.

## V. CLIN#3, TRANSITION ACTIVITIES

### Background

Work under this CLIN covers activities required to transfer work from Project Execution and Integration (PEI) services, Program Performance Management (PPM) services, and Energy Sector Planning and Analysis (ESPA) services contracts (the incumbents) to new MESA sub-CLIN activities issued under CLINs 1, and 2, as appropriate. Select sub-CLIN activities developed in the Annual Operating Plan are expected to be similar to the existing work plans.

The Contractor is expected to complete the orderly, efficient, and effective transition of work within 60 days of the effective date of contract award.

### Scope of Services

The Contractor shall perform all transition activities to begin performance of MESA, consistent with this contract. Transition activities are defined as any effort that is necessary to transition work from incumbent Contractors in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (2) provides for an orderly transfer of resources, responsibilities, and accountability from the incumbent Contractor; and (3) allows the Contractor to perform the work in an efficient, effective, and safe manner. Specific transition activities will be identified; however, anticipated transition activities include, but are not limited to, hiring, relocating, orienting, and training Key Personnel and other staff, and inventorying and assuming responsibility of Government Furnished Property (GFP), etc.

The contractor shall provide NETL all supervision, personnel, tools, equipment and services (excluding those items identified under the Government-furnished section of the contract) to satisfactorily perform transition work in the areas identified in this CLIN. It is expected that Transition shall include staffing at NETL Morgantown and Pittsburgh, and other sites, as required. Travel (between sites) is anticipated. NETL-specific training related to site access and computer access is also anticipated. (NOTE: The Offeror shall discuss the rationale for their proposed travel and training regardless of whether NETL anticipates travel).

The Contractor shall provide a transition plan that describes transition management, execution, and schedule.

**Sub-CLIN 3.1: Transition Management**

The Contractor will provide clearly defined interfaces between its team and NETL [Contracting Officer (CO), Contracting Officer's Representative (COR), CLIN CORs and possibly others)]. The contractor shall provide clear and continuous lines of communication.

The Contractor shall provide a seamless transfer of responsibility for ongoing and new work assignments during the transition period. Such a transfer can be characterized as including:

- Uninterrupted delivery of work assignments;
- Sustained, high quality execution of assignments;
- Mobilization of proposed team, including Program Manager, Business Manager, any other key personnel, and other proposed managers; and
- Utilization of the above listed coordination mechanisms to open lines of communication between parallel incumbent contractor and NETL organizations.

**Schedule**

- I. The effective date (E) of this contract will be TBD.
  - a. The following is a list of activities to be completed by E+60:
    1. HR Sourcing & Selection
    2. HR Relocation, On-boarding & Orientation of Key Staff and corresponding support staff
    3. Mandatory Federal Training of the Staff
- II. Verification and Assumption of Operational Responsibility
  - a. The Contractor will assess its readiness to assume full operational responsibility E+605 and findings will be presented to the Government

**Deliverables**

The first Cost Management Report will be required TBD. In the interim, during transition, the Contractor will provide biweekly cost reports and performance summaries detailing the costs incurred during transition and summary detail of those costs (travel, training, DPLH) and activities performed during the same period.

## Deliverables due E

1. Risk Management Plan
2. QA/QC Program Plan
3. Work Plan Portfolio Transfer Strategy & Plan

## Deliverables due E+30:

1. Management Plan
2. Integrated Safety Management Plan (DOE 450.4)
3. Knowledge and Data Transfer Plan

## VI. GLOSSARY

### Acronyms

<u>Acronym</u>	<u>Definition</u>
AACE	Association for the Advancement of Cost Engineering
COR	Contracting Officer's Representative
DOE	U.S. Department of Energy
EEO	Equal Employment Opportunity
EERE	Energy Efficiency and Renewable Energy
EIA	Energy Information Administration
EOR	Enhanced Oil Recovery
EPAct	Energy Policy Act
ES&H	Environment, Safety, and Health
FE	Fossil Energy
FOAK	First of a Kind
GPRA	Government Performance Results Act
HQ	Headquarters
ISM	Integrated Safety Management
ISO	International Organization for Standardization
LCA	Life Cycle Analysis
NETL	National Energy Technology Laboratory
NEMS	National Energy Modeling System
NEPA	National Environmental Policy Act
OE	Office of Electricity Delivery and Energy Reliability
OHSMS	Occupational Health and Safety Management Systems
OMB	Office of Management and Budget
PART	Program Assessment Rating Tool
PEIS	Programmatic Environmental Impact Statements
PEP	Performance Evaluation Plan
PMA	President's Management Agenda
PPM	Program Performance and Management
PWS	Performance Work Statement
QA/QC	Quality Assessment/Quality Control
R&D	Research and Development
RD&D	Research, Development and Demonstration
RDD&D	Research, Development, Demonstration and Deployment
TRL	Technology Readiness Level
USEPA	United States Environmental Protection Agency
UIC	Underground Injection Control
WBS	Work Breakdown Structure

### Words/Phrases

<u>Words/Phrases</u>	<u>Definition</u>
Off-Site	Any location not on one of the NETL sites as defined in "on-site" below.
On-Site	Federally-owned or leased property within the defined boundaries of the sites at Albany, OR; Morgantown, WV; Pittsburgh, PA; Anchorage, AK, and Sugar Land, TX, including in the case of Morgantown, NETL leased space in the Research Ridge complex immediately adjacent to the boundary.

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**J.4 ATTACHMENT B REPORTING REQUIREMENTS**  
**REPORTING REQUIREMENTS CHECKLIST**

**1. AWARDEE:** [TBD] **2. IDENTIFICATION NUMBER:** [TBD]

**3. 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. In addition, 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
<b>A. GENERAL MANAGEMENT</b> * <input checked="" type="checkbox"/> Management Plan <input checked="" type="checkbox"/> Quality Assurance Mgmt Plan <input checked="" type="checkbox"/> Status Report <input type="checkbox"/> PEP Documentation Report <input checked="" type="checkbox"/> Annual Indirect Rate				None	O, C **	**
				None	O,A ***	**
				None	M	**
				None		
See Text					A*	
<b>B. SCHEDULE/LABOR/COST</b> <input checked="" type="checkbox"/> Subcontract Status Report <input checked="" type="checkbox"/> Annual Work Operating Plan  <input checked="" type="checkbox"/> Cost Management Report <input checked="" type="checkbox"/> Invoice Detail Report <input checked="" type="checkbox"/> Staffing Report Summary  <input checked="" type="checkbox"/> Organization Chart <input checked="" type="checkbox"/> Open Commitment Detail Report				See Text	A or S	**
				Refer to G.8	A	**
				See Text	MI	**
				See Text	MI	**
				See Text	MI	**
				See Text	O, A	**
				See Text	MI	**
<b>C. EXCEPTION</b> <input type="checkbox"/> Conference Record <input checked="" type="checkbox"/> Hot Line Report <input type="checkbox"/> Journal Articles/Conference Papers and Proceedings				None		
				None	A	**
				None	A	**
				See Text		
<b>D. ENVIRONMENTAL ES&amp;H</b> <input checked="" type="checkbox"/> Hazardous Substance Plan <input checked="" type="checkbox"/> Hazardous Waste Report <input checked="" type="checkbox"/> ES&H Hot Line Report <input checked="" type="checkbox"/> DOE NETL ES&H Reports (DOE O 231.1, M 231.1-1, O 232.1) <input checked="" type="checkbox"/> Integrated Safety Management Plan (DOE 450.4)				None	O	**
				None	FC	**
				None	A	**
				See	A	**
				Orders & Manuals		
				See DOE Order	O, A***	**
<b>E. TECHNICAL (One paper copy and One pdf electronic file copy)</b> <input type="checkbox"/> Technical Progress Report  Final Report <input type="checkbox"/> Draft for Review <input type="checkbox"/> Final for Approval <input type="checkbox"/> Topical Report				None		
<b>F. PROPERTY</b> <input checked="" type="checkbox"/> Report of Contractor's Property Management System <input checked="" type="checkbox"/> Semi-Annual Report of Property in The Custody of Contractor  <input checked="" type="checkbox"/> High Risk Property Report <input checked="" type="checkbox"/> Report of Physical Inventory of Capital Equipment <input checked="" type="checkbox"/> Report of Physical Inventory of Sensitive Items <input checked="" type="checkbox"/> Report of Termination or or Completion Inventory				None	P	**
				F580.1-8	S	**
				F580.1-25	YP	**
				None	I	**
				None	YP	**
				SF-1428; SF-120; & F580.1-7	FC	**
<b>G. OTHER</b> <input type="checkbox"/> Key Personnel Staffing Report <input type="checkbox"/> Subcontracting Report <input type="checkbox"/> Summary Subcontracting Report <input type="checkbox"/> Software <input checked="" type="checkbox"/> EEO Compliance Report				None		
				ISR	SS	
				SSR	YS	
				None		
				None	A	**

**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	5

<b>Property Reports</b> 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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\* No later than six months after the close of Contractor's fiscal year,  
 \*\* Reports are to be distributed electronically to the NETL-identified distribution list. In addition, one hard copy of each report must be submitted to the CS and one to the appointed COR. 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 Performance Work Statement Assignments may require other specific

reports and/or deliverables.

\*\*\* Plan is to be updated 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.html>.

### **GENERAL INSTRUCTIONS FOR THE PREPARATION AND SUBMISSION OF REPORTS (OCT 2006)**

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**

The Management Plan describes the contractor's approach to performing the effort and producing the products identified in the contractual agreement, and the technical, 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, both technical and management, 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;
- work element titles and short descriptions and;
- participants.

#### **Work Breakdown Structure (WBS)**

The scope and complexity of the contractual agreement influence the number of levels required. Each descending level represents an increasingly detailed definition of the work elements. Level 1 is the goal or objective of the contractual agreement in its entirety. Level 2 consists of the major work products necessary for achieving the goals of the contractual agreement. Level 3 outlines the major element segments (subsystems) necessary for completing Level 2 elements. Work breakdown structure elements are identified by name and number from a progressive, alphanumeric system. For example:

Example:

WBS Level 1: Contract Level Reporting

WBS Level 2: CLIN Level Reporting



WBS Level 3: Work Assignment Level Reporting

WBS Level 4: Activity Level Reporting

WBS ELEMENT X.X: \_\_\_\_\_(TITLE)

OBJECTIVE: State the objective of the work element in a concise manner.

BACKGROUND: State the background in a concise manner. Include descriptions of any outstanding issues which must be resolved in order to make progress.

TECHNICAL APPROACH: Describe in detail the manner in which the various issues will be resolved. You should consider how the various work elements relate to one another and to other relevant ongoing work. Work outputs which feed into other work elements (and vice-versa) should be clearly delineated.

DELIVERABLES: Describe specifically the results of the effort.

### **Support Systems and Controls**

In this section, the management, technical, 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, automated data processing support, and accounting support.

### **STATUS REPORT**

The Status Report presents the Contractor's narrative technical assessment of the work actually performed and the overall status of the various CLINs/SubCLINs. 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 SubCLIN accomplishment. The report is to include a listing of the major products for each CLIN/SubCLIN in bullet form and, if applicable, a list of pertinent presentations and publications.

### **ANNUAL INDIRECT RATE SUBMISSION**

#### (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) 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 Cochrans Mill Road  
 P.O. Box 10940  
 Contracting Officer for Indirect Rate Cost Management  
 Building 921-107  
 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 calendar 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.

**QUALITY ASSURANCE MANAGEMENT PLAN**

Quality Assurance Management Implementation Plan shall be developed and submitted by the contractor. The plan shall describe how the Contractor will implement QA philosophy, as outlined in DOE O414.1C, Quality Assurance; DOE G 414.1-2, Quality Assurance Management System Guide for Use with 10 CFR Part 830, Subpart A, Quality Assurance Requirements; and NETL O 414.1, Quality Assurance; and NETL Operating Plan 414.1-1, Quality Assurance Plan. The plan shall provide (1) a process and graded approach to the integration of the requirements listed into its everyday work activities; and (2) a discussion on how the execution of the Contractor'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, revised as needed, and be approved by the NETL Quality Manager. The DOE quality assurance directives and guidelines can be found at <http://www.directives.doe.gov/>. NETL quality directives are available on the NETL Intranet.

**SUBCONTRACT STATUS REPORTING INSTRUCTIONS (May 2009) Amended: (May 2012)**

***PURPOSE***

The Subcontract Status Report provides 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 workbook (Subcontractor Status Report.xls) has been included as a sample template. The following is the suggested format for submission of this report.

### **INSTRUCTIONS**

<b><u>Item</u></b>	<b><u>Description</u></b>
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, or Activity numbers (i.e. 0004009.205.01.03), consistent with the contract's Work Breakdown Structure as per the current Management Plan.
10	Enter the official title of the CLIN, Sub-CLIN, 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 used to fund the CLIN/ Sub-CLIN / Activity identified in Item 9.
19	Enter a brief description of the project.
20	Enter the type of contract awarded (i.e. Cost Plus Fixed Fee, Firm Fixed Price, Time-and-Material, etc.). A list of common contract types can be found on the "Contract Types" worksheet in the NETL Subcontractor Report Excel workbook.
21	Enter "Competitive" or "Non-Competitive" depending on the method used in awarding the subcontract.
22	For a "Non-Competitive" entry in Item 21, enter the justification for awarding a non-competitive subcontract.
23	Did current team have the required expertise to perform the activity prior to the subcontract being awarded? Enter either "YES" or "NO".

- 24 Enter a subtotal for each state.
- 25 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 31 the due date is April 30.
- For the period ending September 30 the due date is October 30.

For reporting purposes, each State will be listed and subtotaled separately.

For the purpose of this report, the following definitions apply:

Subcontractor = means any organization or person, other than the prime contractor (to include major or critical subcontractor(s) or partners) who entered into a contractual agreement under the prime contract.

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.

***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, 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.
- 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. Cost distribution for each line of funding will be provided as financial technical direction from the Contracting Officer's Representative (COR) or the CLIN COR.
- 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 pool. 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 as 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, or Activity.

A new line entry must be inserted anytime one of the following components changes:

1. Title/CLIN/Sub-CLIN/ Activity Number
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 CLIN COR.

**INVOICE DETAIL REPORT INSTRUCTIONS (May 2009)**

***PURPOSE***

The Invoice Detail Report provides a monthly status of actual and planned FTE hours worked for each CLIN 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/Sub-CLIN managers will review the data as part of the invoice approval process.

### ***INSTRUCTIONS***

<b><u>Item</u></b>	<b><u>Description</u></b>
1	Enter Contractor's name and address.
2	Enter the contract identification (CID) number.
3	Enter the CLIN/Sub-CLIN/ Activity 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); Sugar Land, TX; Anchorage, 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/ 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/WFO/Local Use combination funding the CLIN/Sub-CLIN/ Activity. Enter the total FTEs by Program/Project/WFO/Local Use combination for each NETL site. This information is derived by applying the same funding distribution as established on the Cost Management Report (CMR) by using the “total actual cost incurred for the reporting period” – Item 22 on the CMR.

### **STAFFING REPORT SUMMARY INSTRUCTIONS (May 2009)**

#### ***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***

<b><u>Item</u></b>	<b><u>Description</u></b>
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); Sugar Land, TX (HOU); Albany, OR (ALB); and Anchorage, 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 (April 2011)**

#### ***BACKGROUND***

The purpose of the Contract Organization Chart is to provide NETL management with data relative to the number of Contractor Full-Time Equivalent Employees (FTE's) assigned to each NETL organization they are supporting within a contract. This report will be used by Federal officials as an information source and project management tool on the distribution of contractor resources allocated to NETL organizations.

#### ***INSTRUCTIONS***

<b><u>Item</u></b>	<b><u>Description</u></b>
<b>1</b>	<b>Submittal Date:</b> Enter the submission date of the report.
<b>2</b>	<b>Source Document:</b> Enter source document used for obtaining the data (this should reflect information from most recent CMR/invoice submission).
<b>3</b>	<b>Submitted by:</b> Enter the name and phone number of the individual authorized to submit the report.
<b>4</b>	<b>Contract:</b> <b>Select from drop-down menu</b> to enter the official contract number ( <i>i.e.</i> , DE-FE0004003). Note: Full name of contract will be displayed in cell adjacent to contract number.
<b>5</b>	<b>NETL Org ID:</b> <b>Select from drop-down menu</b> to enter the current NETL organizational code that the employee supports ( <i>i.e.</i> , 120, 300, 311, <i>etc.</i> ). If the employee supports more than one NETL organization, then multiple entries for a single employee will be required. All Indirect FTEs should be coded as "000". This column is formatted as a TEXT column.
<b>6</b>	<b>NETL Organization Name (Not for contractor data input):</b> When contractor selects 'Org ID' a formula will automatically display the corresponding 'NETL Organization Name'. Check for accuracy.
<b>7</b>	<b>Labor Category:</b> Enter the appropriate labor category of the Employee ( <i>i.e.</i> , <i>Scientist 4, Secretary I, etc.</i> ).
<b>8</b>	<b>Last Name Employee:</b> Enter the full last name of the Employee (letters only). Last names should NOT be in all capital letters. Vacancies should be entered as 'VACANCY' ( <i>Note: Do not use any other term for a vacancy, such as 'TBD', etc.</i> ).
<b>9</b>	<b>First Initial Employee:</b> Enter the first initial of the employee (no period). For employees with identical last names and first initial, include the second letter of the first name. For employees with identical last names and first two initials, include the third letter of the first name. If an employee works for more than one contractor, include the employee's entire first name. Do NOT use all capitals.  Examples: Smith, J - or - Smith, Jo - or - Or Smith, Joh
<b>10</b>	<b>Company No:</b> <b>Select assigned company number from drop-down menu which is linked to the 'Company Key' tab listing.</b> If other companies need to be added to drop-down menu, contractors may update the 'Company Key tab' list as needed. The Company Code # will consist of: contract acronym (alpha characters), hyphen, and numerals in ascending sequence; Contract Abbreviation; and Company name. See additional instructions on Company Key worksheet.

- 11 FTE Allocation:** Enter the FTE percentage allocated to the specific NETL Organization. Unless employee works on both ARRA and non-ARRA projects for one organization, employee should only be listed once for each NETL organization. Use two (2) decimal places only. An employee may have multiple entries, but total FTE value should not exceed 1.00 FTE.
- 12 Location: Select from drop-down menu** to enter the employee's duty station from the following NETL or Offsite work locations only:
- A = Albany, OR  
 AK = Anchorage, AK  
 P = Pittsburgh, PA  
 M = Morgantown, WV  
 R = Research Ridge  
 SL = Sugar Land, TX  
 O = Offsite (Example: Denver, CO, Oak Ridge, TN, Washington, DC, etc.)
- 13 Status: Select 'New' or 'Incumbent' from drop-down menu as described below:**
- New:** Has not previously worked on an NETL site support contract prior to commencement of current contract employer.
- Incumbent:** Worked for another NETL contractor any time prior to commencement of current contract.
- 14 Comments:** Enter additional comments as needed.
- 15 FTE by Location (Not for contractor input):** A formula has been provided to automatically populate the specific columns for each employee entry, based on the corresponding location code selected in the 'Location' column and FTE value provided. Check for accuracy.
- 16 Contract (Not for contractor input):** A formula has been provided to automatically populate the specific contract abbreviation for each employee entry, based on the 'Company Code' selected. Check for accuracy.
- 17 Company Name (Not for contractor input):** A formula has been provided to automatically populate the company name for each employee entry, based on the 'Company Code' selected. Check for accuracy.

#### **SUPPLEMENTAL INSTRUCTIONS**

- This report shall be submitted semiannually as follows:
  - **For the period ending October 31 the due date is the last working day in November. The data for this report will be obtained from the October invoice.**
  - **For the period ending April 30 the due date is the last working day of May. The data for this report will be obtained from the April invoice.**
- Verify data:
  - Is information valid?
  - Eliminate positions that are duplicates.
  - Employee has not been separated or on extended leave.
  - Check spelling.
- Contractors should not overwrite columns with drop-down menus or formulas. The template includes formulas for hundreds of rows. However contractor should ensure that formula is accurate if it was necessary to insert additional rows.
- Prime contractors, major or critical subcontractor(s), First-tier subcontractors, and all lower-tier Subcontractors should be included in submittal.

- Enter number of FTE's charged against a specific NETL organization code. Any essential Indirect FTEs that provide support to the contract in its entirety (not a specific organization) should be coded as "000". If the FTE is split between NETL organizations and/or ARRA work, separate entries will be required for each designation. Be sure the employee's FTE value totals to the correct FTE allocation.
- **DO** list vacancies.
- **DO** submit data for an employee on extended leave.

***AVOID***

- Avoid duplicate entries.
- An employee should only be listed once per NETL Code #.
- Total FTE allocation(s) per employee cannot exceed 1 FTE.

**OPEN COMMITMENT DETAIL REPORT*****BACKGROUND***

The purpose of the open commitment (OC) detail report is to provide NETL CORs with data on the specific elements that comprise the open commitment total and the values associated with each element. NETL uses this information for two primary purposes: 1) to track the flow of costs from open commitments to invoices and 2) to identify the open commitments associated with labor, materials, supplies or travel to support the calculation of performance period costs as defined in the PEP.

***INSTRUCTIONS***

The OC detail report is to be submitted in a spreadsheet format that supports applying column filters to the data. Dollar values are to be formatted consistently to have a "\$" and two decimal places. The report is to be submitted monthly, concurrent with the submission of the CMR and Invoice Detail report.

<b><u>Item</u></b>	<b><u>Description</u></b>
Activity	Full item number, inclusive of contract number
Totals	Total of all open commitments
Deferrals	Total of deferred invoices
Period X fee	Performance period fee carried in open commitments – if more than one period of fee is being carried, add additional columns
Rate Adjustment Reserve	Rate adjustment reserve, if required
Subcontracts in OCs	Subcontract costs held in open commitments; Separate columns for each subcontractor must be provided and must identify the subcontractor. Subcontract cost held in open commitments should be inclusive of any indirect rates applied (including those applied by prime contractor)
Other	Separate columns identifying any other costs carried in open commitments

**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 technical 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.

#### **HAZARDOUS SUBSTANCE PLAN (MAY 1999)**

The Contractor shall submit a Hazardous Substance Plan not later than thirty (30) calendar days after initial contract award. The Plan shall specifically identify each Hazardous Substance (as defined under 40 CFR 261, Subpart D, entitled "Lists of Hazardous Wastes") anticipated to be purchased, utilized or generated in the performance of this contract. For each such Hazardous Substance identified, the Plan shall specifically provide the following information:

Description of Substance/Chemical  
 EPA Hazardous Waste Number  
 EPA Hazard Code  
 Anticipated Quantity to be purchased, utilized or generated  
 Anticipated Hazardous Waste Transporter  
 Anticipated Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)  
 Anticipated Treatment Method

### **HAZARDOUS WASTE REPORT (MAY 1999)**

The Contractor shall submit a Hazardous Waste Report at the completion of contract performance. The Report shall specifically identify each Hazardous Waste (as defined under 40 CFR 261, Subpart D, entitled "Lists of Hazardous Wastes") actually utilized, or generated in the performance of this contract. For each such Hazardous Waste identified, the Report shall specifically provide the following information:

Description of Substance/Chemical  
 EPA Hazardous Waste Number  
 EPA Hazard Code  
 Actual Quantity Disposed  
 Actual Hazardous Waste Transporter  
 Actual Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)  
 Actual Disposal Date  
 Actual Treatment Method

The Hazardous Waste Report is intended as a final reconciliation of anticipated versus actual Hazardous Substances purchased, utilized, or generated in the performance of this contract.

### **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 Part II, Section H, clause entitled "ENVIRONMENTAL, SAFETY, AND HEALTH-ON-SITE SERVICE CONTRACTS" is to be reported within 3 calendar 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 calendar 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 232.1, OCCURRENCE REPORTING AND PROCESSING OF OPERATIONS INFORMATION. Content, form, schedule, and applications are provided in the DOE Orders.
- B. Data, information, or reports include, but are not limited to, the following areas (if applicable):
  1. Work-related fatalities, injuries, and illnesses among Contractor employees arising out of work performed primarily at DOE-owned or -leased facilities
  2. Work-hours and vehicle usage
  3. Estimated property valuation
  4. Interim exposure data reporting
  5. Annual exposure data reporting
  6. Radiological exposure to individuals
  7. Annual summary of fire damage
  8. Epidemiologic analyses-excess injuries and illnesses
  9. Occupational, safety, and health information in support of epidemiological studies conducted by external organizations
  10. Quarterly DOE 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 calendar 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 plan is also required.

#### **CONTRACTOR'S PROPERTY MANAGEMENT SYSTEM**

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.

#### **SEMI-ANNUAL REPORT OF PROPERTY IN THE CUSTODY OF CONTRACTORS (NETL F 580.1-8)**

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 February 28 and August 31 and is due by March 31 and September 30.

180 days prior to the end of the contract, the Contractor shall be required to provide a listing of all Government property (GFP and Contractor Acquired Property) still under the control of (assigned to) the Contractor. The listing shall include the Purchase Order number utilized to acquire the property, acquisition cost, property identification numbers, and current location of property. The listing shall be completed in a spreadsheet manner that can be sorted by the Government (recommend Excel Spreadsheet) and shall be broken into categories (i.e. capitalized, accountable, non-accountable, and sensitive property).

#### **HIGH RISK PROPERTY REPORT (NETL F 580.1-25)**

Property that, because of its potential impact on public health and safety, the environment, national security



interests, or proliferation concerns, must be controlled and dispositioned in other than the routine manner. This order provides accountability and control requirements for only the following categories of HRPP: especially designed or prepared property; export controlled property; hazardous property; radioactive property; nuclear weapon components or weapon-like components that do not contain nuclear material as listed in DOE O 474. 2; proliferation sensitive property; and firearms, ammunition, pyrotechnics, and explosives. For the purposes of this order, HRPP does not include nuclear material within the scope of DOE O 474.2. Further definitions of high-risk property can be found at <https://www.directives.doe.gov/directives/0580.1-BOrder-A/view>. 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**

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 and acquired prior to October 1, 2011; or is acquired at a unit cost of \$500,000 or more, and acquired after October 1, 2011. This report is due 2 years from award date and every 2 years thereafter.

### **REPORT OF PHYSICAL INVENTORY OF SENSITIVE ITEMS**

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 IT equipment, weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals. (48 CFR Subpart 45-101). This report shall be submitted annually 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)**

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.

***SUPPLEMENTALINSTRUCTIONS***

- This report shall be submitted annually as follows:
  - For the period ending September 30 the due date is last working day of October. The data for this report will be obtained from the September invoice.

**J.5 ATTACHMENT B-1 COST MANAGEMENT/INVOICE DETAIL/STAFFING REPORT**

The Cost Management/Invoice Detail/Summary Staffing Report templates are provided as a separate attachment entitled **“DE-SOL-0005388-CMR-Invoice-Staffing.xlsx”**.

**J.6                    ATTACHMENT B-2        CONTRACT ORGANIZATION CHART**

The Contract Organization Chart template is provided as a separate attachment entitled “**DE-SOL-0005388-Contract Org Chart.xlsx**”.

**J.7 ATTACHMENT B-3 – SUBCONTRACT STATUS REPORT**

A sample template for the Subcontract Status Report are provided as a separate attachment entitled “**DE-SOL-0005388- Subcontract Status Report.xlsx**”.

**J. 8 ATTACHMENT C PERFORMANCE EVALUATION PLAN (PEP)****Part I. INTRODUCTION**

- A. This PEP covers the administration of 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 evaluation period will be evaluated and fee determined.
  2. Assure that the contractor's performance is evaluated objectively in a 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 issued under the annual operating plans for types of services as identified in the Performance Work Statement (PWS) located in Section J, Attachment A-2, of the contract.
  2. Cost-Plus-Award CLIN-based annual operating plans 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.
  4. The available award fee pool and fee evaluation periods will be in accordance with the Section B clause entitled Distribution of Performance Award Fee.
  5. The available award fee pool is subject to equitable adjustments in accordance with the special contract requirements in Section H of the contract.
  6. The award fee earned and payable will be determined unilaterally at the sole discretion of the U.S. Government (Government) by the Fee Determination Official (FDO) in accordance with the terms of this contract.
  7. 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.

**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 (FDO)
    - a. The FDO is the Director of the National Energy Technology Laboratory (NETL) who is the Head of Contracting Activity (HCA). The HCA may delegate the FDO assignment/responsibilities to a senior NETL official. The Government may change assignment of the FDO without advance notice to the contractor.
    - 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 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 FDO will designate the PEB Chair. The PEB membership will consist of the contracting officer (CO), contracting officer's representative (COR), and other Federal representatives as selected by the PEB Chair. The Government may change the chair and membership without 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 package prior to submittal to the FDO.

- b. Performance Raters (PRs): The PRs will be the CLIN 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 performance and management effectiveness scores to the PEB. They will coordinate with the necessary personnel to develop the performance and management effectiveness 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 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, CLIN Performance
  - c. Exhibit E-3, Award Fee Conversion Chart
2. Exhibit E-3 is a basis for translating the CLIN 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 impute 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.
3. 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 scope requirements, regardless of whether or not those requirements are specifically identified in the PEP.

#### **B. Award 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 Contract COR will present the draft evaluation findings to the contractor. The 35-day period will allow the contractor to submit, and the CLIN CORs time to review, the invoice for the final month of the performance evaluation period.
  - b. The contractor will be given an opportunity to submit comments to the PEB on the draft evaluation findings within 5 business days of receipt.
  - c. The PEB Chair provides the fee determination recommendation along with any significant contractor comments to the FDO.
  - d. The FDO provides written notification of the final fee determination to the PEB Chair, Contracting Officer, and COR.
  - e. The CO provides the final fee determination to the contractor.
  - f. 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	CLIN Performance	70%
2	Management Effectiveness	30%
	<b>TOTAL</b>	<b>100%</b>

**1. PERFORMANCE AREA 1: CLIN PERFORMANCE (70%)**

**Objective**

The objective of Performance Area 1, CLIN Performance, is to validate the contractor’s performance of the work outlined in the annual operating plan and PWS. Each CLIN of the contract will be assessed individually based on the following performance measures: (1) quality of work, (2) schedule control, and (3) cost control. A description of these measures can be found in Exhibit E.2.

**Performance Measures and Expectations**

Each CLIN will have specific performance expectations that fall under one of the three performance measures listed in the paragraph above. These expectations, along with specific levels of performance, will be documented in the CLIN annual operating plan and PWS. CLINs 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 CLINs will have a cost control expectation weighted at no less than 10%. Each performance expectation will be assigned a weight to communicate its level of importance. The weights for each CLIN will sum to 100%. **An example** of the distribution of weights is shown in the following table.

<b>CLIN 1 Performance Expectations</b>	<b>Weight</b>
Quality of Work Expectation	40%
Schedule Expectation	30%
Cost Control Expectation	30%
<b>TOTAL</b>	<b>100%</b>

The contractor will be evaluated on objective evidence demonstrating performance for each of the CLIN 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 CLIN annual work operating plan.

**Generation of CLIN Performance Score**

Scores will be assigned to each performance expectation based on the level of performance prescribed in the CLIN annual operating plan and PWS. A single score for Performance Area 1 will be generated for each CLIN using the following calculations:

- (1) Performance expectation weight \* score = weighted score
- (2) Add all weighted scores = total weighted score of the performance expectation



An example is shown in the following table.

CLIN 1 Performance Expectations	Weight	* Score	= Weighted Score
Quality of Work Expectation	40%	4.0	1.60
Schedule Control Expectation	30%	2.5	0.75
Cost Control Expectation	30%	3.0	0.90
<b>TOTAL</b>	<b>100%</b>		<b>3.25</b>

The total weighted score for each CLIN will be used to calculate a total CLIN score as discussed in the Determining Award Earned section.

## 2. PERFORMANCE AREA 2: MANAGEMENT EFFECTIVENESS (30%)

### 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 as a whole. As such, all CLINs under this contract as well as other contract management functions (e.g. reporting, communication, management, administration, etc.) can be taken into consideration in developing the Management Effectiveness rating.

### 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 Contract COR and CO who receive input from the CLIN CORs. The evaluation will be based on the contractor's demonstrated results in managing the following evaluation factors:

- a. **COORDINATION/COMMUNICATION.** Effectively coordinates on-site and off-site support of the contract work, including principal subcontractors and vendors. Effectively communicates with other site support contractors, and DOE employees and management to promote successful completion of work. This factor includes coordination and cooperation with third party NETL support contractors who do not have a contractual relationship with the contractor. Effectively manages 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.
- b. **INNOVATION AND VALUE ENGINEERING.** 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. Value engineering techniques and principles are used to ensure the best economical engineering solutions are achieved.
- c. **FINANCIAL AND MANAGEMENT REPORTING.** Provides accurate and timely cost data, contractual reports, invoices, plans, and proposals per the contract's terms and conditions.
- d. **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 CLIN 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. Executes subcontracts and all related contractual and funding documents in a timely fashion so as not to impede the execution of work.
- e. **MANPOWER MANAGEMENT.** Plans, organizes, and manages resources to bring about the successful completion of government-approved project goals and objectives. Manages direct and indirect labor and other costs as identified in the authorized plans to successfully complete work. Manages 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 authorized work plans. Develops partnerships and adds subcontracts as needed to provide a skilled and knowledgeable workforce that can support the depth and breadth of

- NETL’s planning, analytical and research support needs for both short- and long-term assignments.
- f. **ES&H.**
    - i. Complies with contractually-identified Federal, State, and local ES&H requirements and NETL’s ES&H directives.
    - ii. Develops, implements, and maintains an Integrated Safety Management (ISM) plan.
    - iii. Applies ISM’s seven principles and five functions in the planning, budgeting, execution, and improvement of its management and work activities.
    - iv. Supports NETL’s ES&H objective and targets.
    - v. Supports NETL’s ISO 14001 and OHSAS 18001 certifications.
  - g. **RISK MANAGEMENT AND PROBLEM RESOLUTION.** Ensures risk is managed such that services provided, managed, and supported are reliable, their availability is maximized, and their performance is optimized. Proactively identifies potential risks and/or problems and promptly identifies risk mitigation strategies and/or corrects or eliminates undesirable conditions. When reacting to an identified problem, 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.

**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	Excellent demonstration
Very Good demonstration		3.5
Good demonstration		3.0
Satisfactory demonstration		2.5
Unsatisfactory demonstration		0

A performance score will be determined on the overall management of the contract as a whole (as detailed above) and that score will then be assigned to each and every CLIN in the award period being evaluated. **Example** scores are used in the table to provide clarity and assume a Management Effectiveness Performance score of 3.0.

Performance Area	Assigned Score	Performance Area Weight	Weighted CLIN Score
CLIN 1	3.0	30%	0.90
CLIN 2	3.0	30%	0.90

The performance score will be used to calculate a total CLIN score as discussed in the Determining Award Earned section.

**Part IV. DETERMINING AWARD EARNED**

Each CLIN will have an individually-assigned score for Performance Area 1. The contract-level score assigned for Performance Area 2 will be applied to each CLIN for a total of two scores for each CLIN.

These two scores will be weighted according to the weight distributions identified in this document, that is, Performance Area 1: 70%; and Performance Area 2: 30%. The two weighted scores added together results in a total CLIN performance score. Each CLIN’s total performance score will be rounded down to the nearest tenth. The calculation steps are as follows:

- (1) Performance area score \* performance area weight = weighted CLIN score
- (2) Add all weighted CLIN scores = total CLIN performance score

**Example scores** are used in the table to provide clarity and to demonstrate that CLIN performance scores are unique to the rating of each CLIN while management effectiveness scores are applied contract-wide.

<b>CLIN 1</b>			
<b>Performance Area</b>	<b>Assigned Score</b>	<b>Performance Area Weight</b>	<b>Weighted CLIN Score</b>
Performance Area 1, CLIN Performance	3.25	70%	2.27
Performance Area 2, Management Effectiveness	3.00	30%	0.90
<b>CLIN 1 TOTAL PERFORMANCE SCORE</b>			<b>3.17</b>
<b>CLIN 1 TOTAL PERFORMANCE SCORE (rounded down to the nearest tenth)</b>			<b>3.10</b>

<b>CLIN 2</b>			
<b>Performance Area</b>	<b>Assigned Score</b>	<b>Performance Area Weight</b>	<b>Weighted CLIN Score</b>
Performance Area 1, CLIN Performance	2.50	70%	1.75
Performance Area 2, Management Effectiveness	3.00	30%	0.90
<b>CLIN 2 TOTAL PERFORMANCE SCORE</b>			<b>2.65</b>
<b>CLIN 2 TOTAL PERFORMANCE SCORE (rounded down to the nearest tenth)</b>			<b>2.60</b>

The 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 CLIN. 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, CLIN PERFORMANCE**

Specific performance expectations and levels of performance are contained in the CLIN annual operation plans and PWS. All of the expectations will fall under one of the four general performance measures listed below.

<b>Performance Measure</b>	<b>Performance Measure Definition</b>	<b>Level of Performance</b>	<b>Score</b>
<b>Quality of Work</b>	DOE will assess the degree to which work are accurate, complete, and relevant with regard to DOE requests; professional in appearance and format; compliant with DOE and regulatory requirements; and accepted by DOE with minimal or no revision required to complete or correct the product. For research and analytical work, DOE will assess the degree to which the work meets professional standards commensurate with the state of knowledge in that particular field. DOE will evaluate the degree to which the contractor executes work in adherence to prescribed procedures.	Work is (1) always accurate, complete, relevant, and professional and always executed according to prescribed procedures, and is (2) always accepted without revision.	4 Excellent
		Work is (1) consistently accurate, complete, relevant, and professional and consistently executed according to prescribed procedures, and is (2) consistently accepted without revision.	3.5 Very Good
		Work is (1) mostly accurate, complete, relevant, and professional, and mostly executed according to prescribed procedures, and is (2) mostly accepted without revision.	3 Good
		Work is (1) usually accurate, complete, relevant, and professional and usually executed according to prescribed procedures, and is (2) usually accepted without significant revision being required.	2.5 Satisfactory
		Work is (1) seldom accurate, complete, relevant, and professional and seldom executed according to prescribed procedures, and is (2) seldom accepted without significant revision being required.	0 Unsatisfactory
<b>Schedule Control</b>	DOE will assess the timeliness of deliverables, completion of milestones, and responsiveness to DOE requests, and/or range of schedule variance. For research and analytical projects, DOE will also assess the degree to which schedules are kept up to date, accurately tracked, and the degree to which variances are justifiable.	Milestones, deliverables, and DOE requests are always completed ahead of schedule.	4 Excellent
		Milestones, deliverables, and DOE requests are always completed according to schedule.	3.5 Very Good
		Milestones, deliverables, and DOE requests are mostly completed on schedule, or schedule variance is mostly zero or mostly a positive number.	3 Good
		Milestones, deliverables, and DOE requests are usually completed on schedule, or schedule variance is usually zero or usually a positive number.	2.5 Satisfactory
		Milestones, deliverables, and DOE requests are seldom completed on schedule, or schedule variance is seldom zero or seldom a positive number.	0 Unsatisfactory
<b>Cost Control</b> Cost efficiencies and circumstances beyond the control of the contractor will be	DOE will assess the degree to which actual costs, as defined in Section 4, have minimal to no variance from approved annual plan (calculated variance will be rounded down to the nearest tenth).	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 very good score (3.5) or higher. The evaluator may also take into consideration demonstrated cost efficiencies in determining the score.	4 Excellent

Performance Measure	Performance Measure Definition	Level of Performance	Score
<p>taken into consideration and scores will be adjusted accordingly.</p> <p>A definition of the formulas to capture performance period costs and evaluate cost control variance is provided below this Exhibit.</p>	<p>Cost control measures are documented and include a description of the action taken as well as actual dollar amount saved to date and projected savings. The evaluator may also take into consideration cost efficiencies that were documented and confirmed and adjust the score accordingly.</p>	<p>Actual costs are within 10% 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 very good score (3.5) or higher. The evaluator may also take into consideration demonstrated cost efficiencies when determining the score.</p>	<p>3.5 Very Good</p>
		<p>Actual costs are within 15% 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 (3.0) or higher. The evaluator may also take into consideration demonstrated cost efficiencies when determining the score.</p>	<p>3 Good</p>
		<p>Actual costs are within 15% 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. The evaluator may also take into consideration demonstrated cost efficiencies when determining the score.</p>	<p>2.5 Satisfactory</p>
		<p>Actual costs are not within 15% 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.</p>	<p>0 Unsatisfactory</p>

Under Performance Area 1, Cost Control is measured by the variance between actual costs and planned costs during the Performance Period. Actual costs and planned costs are defined here.

Actual Costs for Performance Period = Actual costs reported on the Contract Management Report (CMR) during the Performance Period for the associated award fee evaluation period. Actual costs do not include fee invoiced from prior fee evaluation periods. Actual Costs for Performance Period also include open commitments for costs incurred, but not yet invoiced, for work performed in the evaluation period. Open commitments for costs not impacting the current award fee evaluation period will not be considered including, but not limited to, indirect rate adjustments, costs from the prior performance period, unbilled fee, etc. Lastly, if costs from open commitments are utilized in the calculation of actual costs for the respective award fee evaluation period, then those costs will be not be taken into consideration as actual costs in the evaluation period when those costs are invoiced.

Planned Costs for Performance Period = Planned costs approved in the Annual Operating Plan (AOP) for the respective award fee evaluation period. Planned costs do not include fee.

An example of the formulation of Performance Period actual costs is shown here to provide clarity.

Performance Period Cost Data

- Actual costs invoiced for the performance period = \$45,500
- Open Commitments, for this performance period:
  - Work performed during this period, but not invoiced: = \$12,500
  - Materials/supplies purchased this period, but not invoiced: = \$500
  - Anticipated fee: = \$4,000
- Work performed during the prior performance period,  
but invoiced during current the performance period: = \$10,500

Actual costs for performance period = \$45,500+\$12,500+\$500-\$10,500 = \$48,000

An example of how to determine the cost variance is provided below.

If: Actual costs for performance period = \$48,000

and  
Planned costs for performance period = \$50,000

Then: The cost control variance is -\$2,000 and calculated as \$48,000-\$50,000;  $|-2000/50,000| \rightarrow 4\%$

In this example, the cost control variance is within +/- 5% of the planned costs approved AOP and would be taken into consideration with any cost plan adjustment(s) as well as the quality rating as defined in Exhibit E-2 to establish the cost control measure.

**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>CLIN PERFORMANCE SCORE</b>	<b>PERCENT OF AVAILABLE AWARD FEE EARNED</b>	<b>AWARD FEE ADJECTIVAL RATING</b>	<b>DESCRIPTION</b>
4.0	100	Excellent (between 91% and 100% award fee)	Contractor has exceeded almost all of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
3.9	98		
3.8	95		
3.7	93		
3.6	91		
3.5	87	Very Good (between 76% and 90% award fee)	Contractor has exceeded many of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
3.4	86		
3.3	84		
3.2	82		
3.1	81		
3.0	80		
2.9	70	Good (between 51% and 75% award fee)	Contractor has exceeded some of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
2.8	63		
2.7	55		
2.6	40	Satisfactory (no greater than 50% award fee)	Contractor has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
2.5	30		
0-2.4	0	Unsatisfactory (0% award fee)	Contractor has failed to meet overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.

**J. 9 ATTACHMENT D POSITION QUALIFICATIONS**

NOTE: If accepted, the labor category and minimum position qualifications proposed will be incorporated into (and/or replace) the below listing.

<b>Labor Category</b>	<b>Historical FTE Allocation</b>	<b>Preferred Qualification(s)</b>	<b>Minimum Qualification(s)</b>
<b>Administrative Specialist</b>	3	Administrative Assistant Associate degree or Administrative Assistant certificate  Strong oral and written communication skills	Proficiency in use of Microsoft Office software applications
<b>Business Manager</b>	1	Master's degree in business and a minimum of 5 years of management oversight for a staff of at least 20 personnel with responsibility for providing administrative support and services to a technical or research organization (i.e., professionals, engineers, scientists, etc.) with at least 75 employees	Bachelor's degree in business or related discipline.
<b>Business/Management Analyst</b>	Business/Management Analyst 1: 14 analysts  Business/Management Analyst 3: 8  Business/Management Analyst 5: 4	Level 1: Entry level position. Zero years of experience.  Level 2: A minimum of 2 years of related work experience.*  Level 3: A minimum of 5 years of related work experience.*  Level 4: A minimum of 6 years of related work experience.*  Level 5: A minimum of 10 years of related work experience.*  *Related work experience includes, but is not limited to areas such as: strategic and business planning, systems alignment, performance measures and indicators, process and productivity improvement or proven equivalent ability	Bachelor's degree in business or related discipline.



<p><b>Cost Engineer</b></p>	<p>Cost Engineer 1: 1 Cost Engineer 2: 1 Cost Engineer 3: 3</p>	<p>Level 1: A minimum of 2 years of related work experience.</p> <p>Level 2: A minimum of 5 years of related work experience.</p> <p>Level 3: A minimum of 10 years of related work experience.</p> <p>A professional certification or registration along with advanced education (e.g. a Certified Cost Engineer (CCE) earned through the Association of the Advancement of Cost Engineering) is preferred.</p>	<p>Bachelor's degree in engineering, economics, mathematics, or related discipline.</p>
<p><b>Economist/Financial Analyst</b></p>	<p>2</p>	<p>Level 1: A minimum of 2 years of related work experience in economics, finance, or business.</p> <p>Level 2: A minimum of 5 years of related work experience in economics, finance, or business.</p> <p>Level 3: A minimum of 15 years of related work experience, or a Master's degree and 10 years of related work experience, or a Ph.D. and 5 years of job-related experience.</p> <p>Level : A minimum of 25 years of job-related experience, a Master's Degree and 20 years of related work experience, or a Ph.D. and 15 years of related work experience.</p>	<p>Bachelor's degree in economics, finance, mathematics, or related discipline.</p>

<p><b>Engineer/Scientist</b></p>	<p>Engineer/Scientist 1: 3</p>	<p>Level 1: Entry level position. Zero years experience.</p> <p>Level 2: A minimum of 3 years of related work experience specifically associated with scientific/technical programs.*</p> <p>Level 3: A minimum of 5 years of related work experience specifically associated with scientific/technical programs*, or a Master's degree.</p>	<p>Bachelor's degree in engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, petroleum, etc.) or science (e.g. physics, chemistry, geology, etc.) or related discipline of field.</p>
	<p>Engineer/Scientist 2: 17</p>	<p>Level 4: A minimum of 8 years of related work experience specifically associated with scientific/technical programs*, or a Master's degree and 3 years of job-related experience, or a Ph.D.</p>	
	<p>Engineer/Scientist 3: 9</p>		
	<p>Engineer/Scientist 4: 4</p>		
	<p>Engineer/Scientist 5: 22</p>		
	<p>Engineer/Scientist 6: 4</p>		
	<p>Engineer/Scientist 7: 7</p>		
	<p>Engineer/Scientist 8: 6</p>	<p>Level 5: A minimum of 11 years of related work experience specifically associated with scientific/technical programs*, or a Master's degree and 6 years of job-related experience, or a Ph.D. and 3 years of job-related experience.</p> <p>Level 6: A minimum of 15 years of related work experience specifically associated with scientific/technical programs*, or a Master's degree and 10 years of job-related experience, or a Ph.D. and 7 years of job-related experience.</p> <p>Level 7: A minimum of 20 years of related work experience specifically associated with</p>	

		<p>scientific/technical programs*, or a Master's degree and 15 years of job-related experience, or a Ph.D. and 12 years of job-related experience.</p> <p>Level 8: A minimum of 25 years of job-related experience, or a Master's degree and 20 years of related work experience, or a Ph.D. and 17 years of related work experience.*</p> <p>*A Professional Engineer's license may substitute for 2 years of experience at all levels.</p>	
<p><b>Modeling Support Specialist</b></p>	<p>3</p>	<p>Level 1: A minimum of 2 years of related work experience specifically associated with engineering/economic, or science-based computer models.</p> <p>Level 2: A minimum of 5 years of related work experience specifically associated with engineering/economic, or science-based computer models.</p> <p>Level 3: A minimum of 15 years of related work experience specifically associated with engineering/economic, or science-based computer models, or a Master's degree and 10 years of related work experience, or a Ph.D. and 7 years of job-related experience.</p> <p>Level 4: A minimum of 25 years of related work experience specifically associated with engineering/economic, or science-based computer models, or a Master's degree and 20 years of related work experience,</p>	<p>Bachelor's degree in computer science, operations research, or a Bachelor's degree in engineering, economics, mathematics with a minor in computer science or operations research.</p>

		or a Ph.D. and 17 years of job-related experience.	
<b>Program Manager</b>	1	<p>Master's degree in business-, engineering-, or science-related discipline and a minimum of 15 years of related work experience in the management, operation, or administration of multi-million dollar research, development, demonstration, or commercial programs, projects, and facilities.</p> <p>A minimum of 5 years of consecutive work experience in supervising diverse and integrated work forces (e.g. professionals, engineers, scientists, etc.) in a geographically dispersed work environment.</p>	Bachelor's degree in business, engineering, or science-related discipline.
<b>Project Manager</b>	8	<p>A minimum of 5 years related work experience in project management.</p> <p>Project Management Professional (PMP) certification.</p>	Bachelor's degree in business administration, engineering, and other science-related field.
<b>Regulatory Analyst</b>	1	A minimum of 5 years related work experience in regulatory analysis	Bachelor's degree in business, technical, or science-related discipline.
<b>Software Engineer</b>	1	<p>Level 3: A minimum of 3 years related work experience in information technology support.</p> <p>Level 5: A minimum of 5 years related work experience in information technology support.</p> <p>Level 7: A minimum of 7 years related work experience, or a master's degree and 5 years of related work experience.</p>	Bachelor's degree in computer science or computer information systems.

<p><b>Technical Communications Specialist</b></p>	<p>Technical Communications Specialist 1: 5</p> <p>Technical Communications Specialist 2: 2</p> <p>Technical Communications Specialist 3: 1</p>	<p>Level 1: A minimum of 5 years related work experience or proven equivalent ability.</p> <p>Level 2: A minimum of 10 years related work experience, or a Master's degree and 8 years of related work experience.</p> <p>Level 3: A minimum of 15 years related work experience, or a Master's degree and 10 years of related work experience.</p>	<p>Bachelor's degree.</p>
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**J.10 ATTACHMENT E WAGE DETERMINATIONS/COLLECTIVE BARGAINING AGREEMENTS**

The following list of Department of Labor Wage Determinations (WD) and Collective Bargaining Agreements (CBA's), if any are incorporated in this contract and are provided in a separate file attachment entitled "**DE-SOL-0005388-WD-CBA2013.PDF**":

**Section K - Representations, Certifications, and Other Statements of Bidders****K.1 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2014)**

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 541330.

(2) The small business size standard is \$35.5M.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the provision at FAR 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at FAR 52.204-7 is not included in this solicitation, and the Offeror is currently registered in the System for Award Management (SAM), and has completed the Representations and Certifications section of SAM electronically, the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (d) applies.

(ii) Paragraph (d) does not apply and the Offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) FAR 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) FAR 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the provision at FAR 52.204-7, System for Award Management.

(iv) FAR 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) FAR 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation. This provision applies to solicitations using funds appropriated in fiscal years 2008, 2009, 2010, or 2012.

(vi) FAR 52.209-5, Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vii) FAR 52.214-14, Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(viii) FAR 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(ix) FAR 52.219-1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(x) FAR 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xi) FAR 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at FAR 52.222-26, Equal Opportunity.

(xii) FAR 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at FAR 52.222-26, Equal Opportunity.

(xiii) FAR 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiv) FAR 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA–designated items; or include the clause at FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xv) FAR 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xvi) FAR 52.225-2, Buy American Act Certificate. This provision applies to solicitations containing the clause at FAR 52.225-1.

(xvii) FAR 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at FAR 52.225-3.

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$79,507, the provision with its Alternate II applies.

(D) If the acquisition value is \$79,507 or more but is less than \$100,000, the provision with its Alternate III applies.

(xviii) FAR 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at FAR 52.225-5.



(xix) FAR 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan— Certification. This provision applies to all solicitations.

(xx) FAR 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxi) FAR 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to—

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

(2) The following certifications are applicable as indicated by the Contracting Officer:

— (i) FAR 52.219-22, Small Disadvantaged Business Status.

— (A) Basic.

— (B) Alternate I.

— (ii) FAR 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

— (iii) FAR 52.222-48, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

— (iv) FAR 52.222-52, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

— (v) FAR 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA—Designated Products (Alternate I only).

— (vi) FAR 52.227-6, Royalty Information.

— (A) Basic.

— (B) Alternate I.

— (vii) FAR 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The Offeror has completed the annual representations and certifications electronically via the SAM website accessed through <https://www.acquisition.gov>. After reviewing the SAM database information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [Offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause #	Title	Date	Change

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

**K.2 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST-DISCLOSURE (JUN 1997)**

(a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An Offeror notified that it is the apparent successful Offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful Offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.

(c) The statement must contain the following:

(1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the Offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the Offeror to provide the required statement may result in the Offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

**K.3 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (SEPT 2010)**

By submission of its offer, the Offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause [52.222-37](#), Employment Reports on Veterans), it has submitted the most recent VETS-100A Report required by that clause.

**K.4 52.225-25 PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN ACTIVITIES OR TRANSACTIONS RELATING TO IRAN-REPRESENTATION AND CERTIFICATIONS (DEC 2012)**

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

Person-

(1) Means-

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

- (2) Does not include a government or governmental entity that is not operating as a business enterprise.

Sensitive technology-

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically-

- (i) To restrict the free flow of unbiased information in Iran; or  
(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

- (b) The Offeror shall email questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

- (c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with [25.703-4](#), by submission of its offer, the Offeror-

- (1) Represents, to the best of its knowledge and belief, that the Offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

- (2) Certifies that the Offeror, or any person owned or controlled by the Offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and

- (3) Certifies that the Offeror, and any person owned or controlled by the Offeror, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

- (d) Exception for trade agreements. The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if-

- (1) This solicitation includes a trade agreements notice or certification (e.g., FAR [52.225-4](#), FAR [52.225-6](#), FAR [52.225-12](#), FAR [52.225-24](#), or comparable agency provision); and

- (2) The Offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

**K.5 952.226-73 ENERGY POLICY ACT TARGET GROUP REPRESENTATION (SEP 1997)**

- (a) The Offeror is:

- (1) \_\_\_An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent—

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof; or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) \_\_\_An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) \_\_\_A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) By submission of an offer, the Offeror agrees to provide to the Contracting Officer, upon request, evidence satisfactory to the Contracting Officer that the Offeror is an entity from the Energy Policy Act target group identified.

## **Section L - Instructions, Conditions, and Notices to Bidders**

### **L.1 CONSECUTIVE NUMBERING**

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

### **L.2 SMALL BUSINESS SIZE STANDARDS AND SET-ASIDE INFORMATION**

This acquisition is set aside for small business competition with a small business size of \$35.5 million (average annual receipts over last three completed fiscal years) and a NAICS code of 541330.

### **L.3 RESPONSIBLE PROSPECTIVE CONTRACTORS**

All responsible small business concerns who meet the requirements of FAR 52.219-6, as listed in Section I of this solicitation, may submit proposals for consideration. The general and additional minimum standards for responsible prospective Contractors set forth at FAR 9.1 apply.

Only proposals offering the full range of services in the Performance Work Statement for the base period and for all identified option periods will be evaluated and considered for award.

DOE may conduct pre-award surveys in accordance with FAR 9.106 and may solicit from available sources, relevant information concerning the Offeror's record of past performance, and use such information in making determinations of prospective Offeror responsibility.

### **L.4 FEDCONNECT**

The Department of Energy's (DOE), National Energy Technology Laboratory (NETL) is using the FedConnect web portal (found at <https://www.fedconnect.net>) to disseminate the solicitation, receive questions, and accept proposals for this Request for Proposal (RFP). **ONLY PROPOSALS SUBMITTED THROUGH FEDCONNECT WILL BE CONSIDERED FOR AWARD.**

To get started, download a copy of the quick start guide, "[FedConnect, Ready, Set, Go Guide](#)" which will provide assistance/instructions on registering, finding an opportunity, sending and receiving messages, and submitting a response.

To register, please visit the FedConnect web portal at <https://www.fedconnect.net>, and click on the link: "Click here to register." Please note that before you can register in FedConnect, you will need a DUNS (<http://fedgov.dnb.com/webform>) and a Federal Contractor Central Registration (CCR) account ([www.ccr.gov](http://www.ccr.gov)). You are encouraged to register as soon as possible and should allow at least 14 days to complete these registrations.

**YOU ARE ENCOURAGED TO SUBMIT YOUR PROPOSAL EARLY AS EXTENSIONS WILL NOT BE GRANTED DUE TO ERRORS IN REGISTERING/SUBMITTING.**

To find this RFP, click on "Search Public Opportunities" and search by the RFP Number, DE-SOL-0005388. Please bookmark this page and check it frequently for updates to this RFP. It is highly recommended that once you access the opportunity that you request to be alerted for amendments, messages, and any e-mail alerts associated with this RFP. To do so, you will need to click on the "Register to Receive Notifications" button under "What do I do now?" If someone from your company has already registered interest for this opportunity, the "Register to Receive Notifications" button will not display. Instead, you will have the option to join the response team by clicking the Join the Team button within the Response Team section.

All questions regarding the content of this solicitation must be submitted electronically via FedConnect. You must register with FedConnect to respond as an interested party to submit questions, and to view responses to questions. Questions and answers will also be posted to the electronic reading room available at the following Web address <http://www.netl.doe.gov/business/site-support>. Questions will not be answered over the phone. The Contracting Officer must receive questions regarding the RFP via FedConnect no later than ten (10) business days prior to the

established due date. The Government reserves the right to not respond to any questions received after this timeframe.

Please note - FedConnect is owned and operated by Compusearch Software Systems Inc., not by the Department of Energy and DOE does not provide help desk assistance for FedConnect. For assistance with FedConnect, please contact FedConnect directly:

By e-mail: support@FedConnect.net

By phone: 1-800-899-6665 (8:00 a.m. to 8:00 p.m., Eastern Daylight Time, except Federal holidays).

#### **L.5 ELECTRONIC SUBMISSION OF PROPOSALS**

Offerors must submit their proposal in accordance with the Proposal Preparation Instruction contained herein. Proposals and amendments of proposals shall only be accepted through FedConnect and must be received no later than 4:00 p.m. Eastern Daylight time on July 15, 2014.

Electronic files of a large size may take a considerable amount of time to upload. It is your responsibility to allow an adequate amount of time for your proposal submission.

You are strongly encouraged to submit your proposal at least 24 hours before the specified deadline in order to have time to resolve any transmission problems.

**PROPOSALS, OR PROPOSAL FILES, THAT HAVE A FEDCONNECT DATE/TIME STAMP LATER THAN THE IDENTIFIED DEADLINE WILL BE CONSIDERED "LATE" AND WILL NOT BE REVIEWED OR CONSIDERED FOR AWARD.** The Offeror shall be notified that their proposal was determined as being submitted late and was not further evaluated.

It is the responsibility of the Offeror, prior to the offer due date and time, to verify successful transmission.

#### **L.6 UNNECESSARILY ELABORATE PROPOSALS AND FILE SIZE LIMITATIONS**

Unnecessarily elaborate proposals beyond those sufficient to present a complete and effective response to this solicitation are not desired. Elaborate art work, graphics and pictures may increase the document's file size. It is suggested that in preparing your proposal that you create files less than 5 MB. However, this file size may not be appropriate in all situations. As the nature of the proposal may create large files, Offerors may wish to use "Zip" file compression software such as WinZip (Version 10 or earlier). Using this compression software will diminish the file size, thus reducing the time needed to upload and download a proposal.

#### **L.7 52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)**

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

#### **L.8 52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)**

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

#### **L.9 52.215-1 INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION (JAN 2004)**

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

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

"In writing, writing, or written" means any worded or numbered expression that can be read, reproduced,

and later communicated, and includes electronically transmitted and stored information.

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

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

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

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

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the Offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show-

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the Offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the Offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Submission, modification, revision, and withdrawal of proposals.* (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and -

(1) If it was transmitted through an electronic commerce method

authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at FAR 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an Offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the Offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the Offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes,



shall -

(1) Mark the title page with the following legend:

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

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible Offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with Offerors (except clarifications as described in FAR 15.306(a)). Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the Offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with Offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful Offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting Offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed Offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed Offeror and past performance information on the debriefed Offeror.

(iii) The overall ranking of all Offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful Offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed Offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

**L.10 52.215-22 LIMITATIONS ON PASS-THROUGH CHARGES—IDENTIFICATION OF SUBCONTRACT EFFORT (OCT 2009)**

(a) Definitions. Added value, excessive pass-through charge, subcontract, and subcontractor, as used in this provision, are defined in the clause of this solicitation entitled "Limitations on Pass-Through Charges" (FAR 52.215-23).

(b) General. The Offeror's proposal shall exclude excessive pass-through charges.

(c) Performance of work by the Contractor or a subcontractor.

(1) The Offeror shall identify in its proposal the total cost of the work to be performed by the Offeror, and the total cost of the work to be performed by each subcontractor, under the contract, CLIN, or sub-CLIN.

(2) If the Offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, CLIN, or sub-CLIN, the Offeror shall identify in its proposal-

(i) The amount of the Offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the Offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, CLIN, or sub-CLIN intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the Offeror shall identify in its proposal--

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

- (ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

**L.11 52.216-1 TYPE OF CONTRACT**

The Government contemplates award of a Cost-Plus-Award Fee contract resulting from this solicitation.

**L.12 52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)**

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

**L.13 52.222-46 EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)**

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, Offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the Offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

**L.14 52.233-2 SERVICE OF PROTEST (SEP 2006)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated

acknowledgment of receipt from the Contracting officer, Department of Energy, National Energy Technology Laboratory, 626 Cochran Mill Road, P.O. Box 10940, Pittsburgh, PA 15236

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

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

**L.15 52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME (OCT 1997)**

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

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

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

(b) For any proposed hours against which an uncompensated overtime rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

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

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

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

**L.16 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions 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. The Offeror is cautioned that the listed provisions may include blocks that must be completed by the Offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es): Federal Acquisition Regulations (Clauses starting with 52): <http://www.acquisition.gov>. Department of Energy Regulations (Clauses starting with 952): <http://energy.gov/DEAR.htm>.

**L.17 952.219-70 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.

**L. 18 952.226-70 SUBCONTRACTING GOALS UNDER SECTION 3021(A) OF THE ENERGY POLICY ACT OF 1992 (PUB. L. 102-486) (JUN 1996)**

(a) Definition. Energy Policy Act target groups, as used in this provision means—

(1) An institution of higher education that meets the criteria of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent—

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined by the Secretary of Education to be Historically Black Colleges and Universities pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Section 3021 of the Energy Policy Act (Pub. L. 102-486) establishes a goal of award of 10 percent of the contract dollar value for prime and subcontract Energy Policy Act awards to Energy Policy Act target groups.

(c) The Offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small Business Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the three Energy Policy Act target groups. Individual goals shall be expressed in terms of a percentage of the Offeror's proposed contract dollar value. In addition, the offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and, if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small Business Subcontracting Plan.

**L.19 952.227-84 NOTICE OF RIGHT TO REQUEST PATENT WAIVER (FEB 1998)**

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at DEAR 952.227-11 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

**L.20 952.233-4 NOTICE OF PROTEST FILE AVAILABILITY (AUG 2009)**

(a) If a protest of this procurement is filed with the Government Accountability Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective Offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to 48 CFR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103-355. Such request must be in writing and addressed to the Contracting Officer for this procurement.

(b) Any Offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective Offerors in accordance with the requirements of 48 CFR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, Offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

**L.21 952.233-5 AGENCY PROTEST REVIEW (SEP 1996)**

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

**L.22 DOE-L-1004 NUMBER OF AWARDS**

It is anticipated that there will be one award resulting from this solicitation. However, the Government reserves the right to make any number of awards, or no award, if considered to be in the Government's best interest to do so.

**L.23 DOE-L-1005 FALSE STATEMENTS**

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

**L.24 DOE-L-1006 EXPENSES RELATED TO OFFEROR SUBMISSIONS**

This solicitation does not commit the Government to pay any costs incurred in the submission of any proposal or bid, or in making necessary studies or designs for the preparation thereof or for acquiring or contracting for any services relating thereto.

**L.25 DOE-L-1007 PREBID/PREPROPOSAL CONFERENCE - NONE**

No prebid/preproposal conference for this solicitation is planned.

**L.26 DOE-L-1009 SITE VISIT NOT PLANNED**

Site visits are not required in order to respond to this solicitation.

**L.27 DOE-L-1012 GUIDANCE FOR PROSPECTIVE OFFERORS – IMPACT OF TEAMING ARRANGEMENTS ON SMALL BUSINESS STATUS**

(a) This procurement has been set aside for small business. In order to ensure that award is made to an eligible small business, prospective Offerors, in consultation with legal counsel, are encouraged to review the Small Business Administration's (SBA's) size eligibility standards found at Title 13 of the Code of Federal Regulations, Section 121 (13 C.F.R. § 121). In particular, Offerors proposing a joint venture, subcontracting, or another form of teaming arrangement should review 13 C.F.R. § 121.103, "How does SBA determine affiliation?" prior to submitting a proposal.

(b) The SBA is the sole authority for making determinations of small business status for small business programs. Such determinations are binding on the Offeror and the Contracting Officer. Accordingly, a finding by the SBA of affiliation between an Offeror and its proposed team member(s) or subcontractor(s) may result in the Offeror being found to be other than a small business and therefore ineligible for contract award.

(c) Business concerns are considered to be affiliates of each other if either one directly or indirectly controls or has the power to control the other, or if another concern controls both. In determining whether affiliation exists, factors such as common ownership (stock ownership or options, convertible securities and agreements to merge), common management, and contractual relationships are considered. An Offeror will also be found to be affiliated with its subcontractor(s) if the Offeror is unusually reliant upon its subcontractors or if the subcontractor(s) will perform primary and vital requirements of a contract.

(d) The SBA has issued several decisions concerning its evaluation of affiliation of an Offeror and its proposed subcontractor(s). The following examples set forth characteristics that the SBA has reviewed in considering the question of affiliation and may assist prospective Offerors in developing any teaming arrangements and their proposals.

(1) The SBA considers whether proposed subcontracting, partnership, joint venture, or other teaming arrangements contain discrete descriptions of the activities or work to be performed by each party. The SBA considers whether the Offeror or, if the Offeror is a joint venture or partnership, the joint venture participants or partners, perform the primary or vital portions of the Statement of Work. The SBA considers whether teaming arrangements clearly set forth the relationship between the parties, as well as the individual roles and responsibilities assigned.

(2) The SBA considers whether there is a clear separation of facilities, employees, and management (decision-making authority) between the Offeror and any entities with which it has teaming arrangements.

(3) The SBA considers the extent to which the Offeror directly employs Key Personnel (Program Manager, Project Manager, etc.).

(4) If the Offeror is an eligible small business prime contractor, the SBA considers whether the majority of the technical expertise resides with the Offeror. If the Offeror is an eligible joint venture the SBA considers whether the majority of the technical expertise resides among the joint venture members.

(5) The SBA considers the Offeror's profit sharing arrangements with its proposed subcontractor or other entities.

(6) In reviewing affiliation between the Offeror and its proposed subcontractors or entities with which the Offeror has a teaming arrangement, SBA considers the previous contractual or business relationships between the Offeror and that entity.

**L.28 DOE-L-1013 ALTERNATE PROPOSAL INFORMATION - NONE**

Alternate proposals are not solicited, are not desired, and will not be evaluated.

**L.29 DOE-L-1017 AVAILABILITY OF REFERENCED DOCUMENTS**

a.) An electronic reading room is available at the following Web address <http://netl.doe.gov/business/site-support>.

**L.30 DOE-L-1021 PROTESTS TO THE DEPARTMENT OF ENERGY**

Potential bidders or Offerors may submit a protest in accordance with FAR Part 33.1 and DEAR 933.1. Protests to the Department of Energy must be submitted directly to the Contracting Officer and shall be decided by the Head of the Contracting Activity (HCA), except for cases which shall be decided by the Procurement Executive. The Procurement Executive or the HCA (whichever is the deciding authority) will issue a decision on the protest within 35 calendar days, unless a longer period of time is determined to be needed.

**L.31 DOE-L-1022 PROPOSAL PREPARATION INSTRUCTIONS - GENERAL**

(a) General - Proposals are expected to conform to solicitation provisions and be prepared in accordance with this section. To aid in evaluation, the proposal must be clearly and concisely written as well as being neat, indexed (cross-indexed as appropriate) and logically assembled. All pages of each part must be appropriately numbered and identified with the solicitation number and the name of the Offeror.

The term "Offeror" as used in this Section L refers to the single legal entity submitting the offer which may be a "contractor team arrangement" as that term is defined in FAR 9.601. The Offeror may be pre-existing or a newly formed business entity for the purposes of competing for this contract.

The term "major or critical subcontractor" refers to any subcontractor proposed to perform a significant portion of a CLIN (proposed cost reimbursement or time and material type subcontract with an estimated cost in excess of \$1 million per year).

(b) Overall Arrangement of Proposal - The Offeror must be registered and have access to the FedConnect website located at [www.fedconnect.net](http://www.fedconnect.net). The overall proposal must consist of three separated volumes individually titled as stated below. The Offeror must submit each proposal volume utilizing FedConnect.

VOLUME NUMBER	TITLE	PAGE LIMITATIONS
Volume I	Offer and Other Documents	None
Volume II	Technical Proposal	See Proposal Preparation Instructions below in Volume II, Technical Proposal
Volume III	Cost Proposal	None

(c) Do not assume that because you have had similar contracts with the Federal Government, including the Department of Energy, that reviewer knows of your performance under such contracts and will make assumptions regarding your proposal based on that knowledge. Any proposals received in response to this solicitation will be reviewed strictly as submitted and in accordance with the evaluation criteria specified in Section M.

**L.32 DOE-L-1023 PROPOSAL PREPARATION INSTRUCTIONS – OFFER AND OTHER DOCUMENTS – VOLUME 1**

(a) General

Volume I, Offer and Other Documents consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgements, justification for non-competitive proposed subcontracts, identification of technical data to be withheld, request for waiver of patent clauses, and any exceptions or deviations taken.

(b) Format and Content

For consistency, the Offeror is instructed to use the file names specified below. File name extensions shall clearly indicate the software applications used for preparation of the documents (i.e. ".pdf" for Adobe Acrobat (version 9.5.1 or earlier) or ".doc" for Word (version 2010 or earlier)).

Volume I, Offer and Other Documents, must include the following documents (in the order listed):

FILE	FILE NAME
File 1 Offer Cover Sheet	<company name>File 1 Offer Cover Sheet.---
File 2 SF33 Form -- Solicitation, Offer and Award	<company name>File 2 SF33.---
File 3 Fill in of Contract Clauses	<company name>File 3Fill In.---
File 4 Financial Responsibility	<company name>File 4 Financial.---
File 5 Systems	<company name>File 5 Systems.---



File 6 Administrative Discussion

<company name>File 6 Administrative.---

(c) FILE 1, OFFER COVER SHEET

The filename shall be in this format <company name>File 1 Offer Cover Sheet.---

The Offer Cover Sheet shall contain the following information:

- Solicitation number and title: DE-SOL0005388, Mission Execution and Strategic Analysis (MESA)
- Offeror name, address, and DUNS
- Indicate the business size (e.g. small business, Veteran Owned Small Business, etc.)
- If proposing any kind of partnership, each individual member (including Limited Liability Corporations (LLC) and Joint Ventures (JV)), indicate the names, addresses, and DUNS of the partner companies and the date the partnership was approved. - If proposing major or critical subcontractors, indicate the name(s), address(s), business size, and DUNS of each major or critical subcontractor.

(d) FILE 2, SF33 FORM - SOLICITATION, OFFER AND AWARD

The filename shall be in this format <company name>File 2 SF33.---

The SF33 Form has been uploaded with the solicitation, as a separate Word document (SF33.doc), which can be used for the Offeror to complete, save and submit as File 2. The following areas must be completed on the SF33:

- (1) Offerors shall complete Blocks 12, 15A, 15B, 15C, 16, 18, and sign in block 17 (typed name of authorized organizational representative). The SF33 shall be fully executed, including the acknowledgment of amendments, if applicable.
- (2) The Offeror's Acceptance Period (See Block 12) entered shall not be less than 180 calendar days.
- (3) Signature Authority. The person signing the SF33 must have the authority to commit the Offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the solicitation, to make an award without further discussion if it so elects. Proposals submitted through FedConnect constitute submission of electronically signed proposals. The name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the Offeror to the conduct of a project) must be typed in the signature block on the form to be accepted as an electronic signature. A scanned copy of the signed document is not required.

(e) FILE 3, FILL IN OF CONTRACT CLAUSES

The filename shall be in this format: <company name>File 3 Fill In.---

A separate Word document (Fill In.docx) has been uploaded with the solicitation, which contains items that are to be completed by the Offeror, saved, and submitted as File 3. This file contains the following:

1. Certain solicitation clauses - All areas marked as “[TBD]” in these clauses are to be filled in by the Offeror, this information shall then be utilized to complete these specific areas prior to contract award.

Position Qualifications - All areas marked as “[TBD]” are to be filled in by the Offeror. If the proposal is selected for award, the labor category and minimum position qualifications proposed by the Offeror will be incorporated into (and/or replace) the list in Part III, Section J, attachment entitled “Position Qualifications.” It is expected that the position descriptions and minimum qualifications will apply to all individuals assigned to the specified labor category regardless of their employer (e.g. if subcontracted for a specific labor category, the subcontract must provide personnel who meet or exceed the minimum qualifications stated). Any exceptions or deviations shall be identified in the Volume I, Administrative Discussion (see File 5 below).

For each position identified (by the Government), propose the minimum position qualifications and provide a brief job position description. Proposed job position descriptions and minimum qualifications shall meet or exceed the minimum requirements of the RFP identified in Part III, Section J, attachment entitled "Position Qualifications." The proposed job position descriptions shall depict the type of work to be performed by each labor category. The job position descriptions shall not limit the contractor in performance of the contract but merely provide a broad description of the expected duties intended to be performed. If additional labor categories (not already identified on the list) are expected to be utilized during performance of this contract, identify those position(s) on separate lines in alphabetical order, immediately following the categories provided by the Government and provide the position information as required above.

(f) FILE 4, FINANCIAL RESPONSIBILITY

The filename shall be in this format: <company name>File 4 Financial.---

TABLE OF CONTENTS

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

To demonstrate the organization's current financial strength and responsibility, the Offeror shall provide the financial data detailed below. NOTE: If the Offeror is a joint venture or partnership, financial information must be provided for each member of the joint venture or each partner.

- (a) published financial statements for the three prior annual accounting periods, including Balance Sheet, Statement of Operations (Profit and Loss Statement), and Statement of Changes in Financial Position;
- (b) the estimated percentage this proposed contract will represent of the Offeror's total business for the first year of the contract;
- (c) a copy of the most recent 10K report filed with the Securities and Exchange Commission, if any; and
- (d) if the Offeror is a limited liability corporation or other partnership entity (including joint ventures) then a performance guarantee agreement is required for each individual entity making up the teaming arrangement. The performance guarantee shall be executed by a financially responsible guarantor, guaranteeing that all contractual obligations of the Offeror will be met. The performance guarantee(s) are required in order to determine financial responsibility. A model performance guarantee agreement is provided in Part III, Section J of this solicitation. The executed performance guarantee(s) shall replace the model agreement in the executed contract.

The DOE reserves the right to obtain additional financial information from Offerors in order to determine financial responsibility, and to more fully assess potential organizational conflicts of interest.

(g) FILE 5, SYSTEMS

The filename shall be in this format: <company name>File 5 Systems.---

1. Accounting System - The Offeror shall identify the name and type of accounting system and indicate if the system has been audited. If the Offeror is a joint venture or a partnership, also identify the respective corporate entity where the system is located. If the system has been audited, the Offeror shall provide, to the Government, a copy of the certification from the Offeror's cognizant Government Agency demonstrating that the Offeror has an approved accounting system for use under this contract. In the event that the Offeror does not have an approved accounting system, the Offeror shall indicate such and provide documentation sufficient to demonstrate to the Government its fiscal responsibility to identify and track costs.

2. Purchasing System – The Offeror shall identify the name and type of purchasing system and indicate if the system has been audited. If the Offeror is a joint venture or a partnership, also identify the respective corporate entity where the system is located. If the system has been audited, the Offeror shall provide, to the Government, a

copy of the certification from the Offeror's cognizant Government Agency demonstrating that the Offeror has an approved purchasing system for use under this contract. In the event that the Offeror does not have an approved purchasing system, the Offeror shall indicate such and provide documentation sufficient to demonstrate to the Government purchasing procedures demonstrating sound business practices.

3. Property System - The Offeror shall identify the name and type of property management system and indicate if the system has been audited. If the Offeror is a joint venture or a partnership, also identify the respective corporate entity where the system is located. If the system has been audited, the Offeror shall provide, to the Government, a copy of the certification from the Offeror's cognizant Government Agency demonstrating that the Offeror has an approved property management system for use under this contract. In the event that the Offeror does not have an approved property management system, the Offeror shall indicate such and provide documentation sufficient to demonstrate to the Government the ability to inventory, track, and control Government furnished property.

(h) ADMINISTRATIVE DISCUSSION

The filename shall be in this format: <company name>File 6 Administrative.---

TABLE OF CONTENTS

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

The Offeror's administrative discussion shall address the following:

**Authorized Negotiators.** The Offeror shall include the name, title, address, telephone (including cellular telephone, if available), fax number, email address, and company affiliation for all individuals authorized to negotiate on behalf of the Offeror.

**Equal Employment Opportunity.** The Offeror shall provide all of the information required to perform a pre-award on-site equal opportunity compliance evaluation in accordance with FAR 52.222-24. This information shall include, but not be limited to: the company name, address, phone number and the point of contact for equal employment opportunity matters. This information shall be provided for the Offeror, as well as, each joint venture member (if a joint venture is proposed), each individual member of a newly formed entity (including Limited Liability Corporations (LLC)) formed for the purpose of performing this contract, or members of similar entities.

**Exceptions and Deviations –** Exceptions and deviations are not sought and the Government is under no obligation to enter into discussions. However, the Offeror shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the resulting contract (as identified in Part IV, Section L, provision entitled Content of Resulting Contract), Offeror Representations and Certifications, and the requirements included in Volume I -- Offer and Other Documents, Volume II -- Technical Proposal, and Volume III -- Cost Proposal. Any exceptions taken must contain sufficient justification to permit evaluation. The benefit to the Government shall be explained for each exception taken. Any exceptions or deviations to Section I of the RFP, or any FAR or DEAR clauses elsewhere in the RFP, will make the proposal non-responsive to this RFP. If the Offeror does not submit their Representations and Certifications electronically as indicated in Section K then the Offeror must submit them as an exception and include them in this file. This file shall also contain any justification for noncompetitive proposed subcontracts and any request for waiver of patent clauses.

**NOTE:** An Offeror's failure to submit a complete and sufficient offer, or an Offeror's taking of exceptions or deviations, or an Offeror indicating conditional assumptions, to the terms of this solicitation, may make the offer unacceptable for award without discussions. If an Offeror proposes exceptions, deviations, and/or conditional assumptions, DOE may make an award to another Offeror that did not take exceptions, deviations, and/or conditional assumptions of this solicitation.

**L.33 PROPOSAL PREPARATION INSTRUCTIONS - TECHNICAL PROPOSAL VOLUME II**

**(a) GENERAL**

(1) Volume II – The Technical Proposal consists of written information intended to present the Offeror’s understanding, capabilities, and approach to satisfy the requirements of the Performance Work Statement (PWS). The Technical Proposal should be specific and complete in every detail. The Technical Proposal should be practical and be prepared simply and economically, providing a straightforward, concise delineation of the requested information.

(2) The Technical Proposal shall be evaluated strictly on the merit of the material submitted.

(3) **No contractual cost information is to be included in the Technical Proposal.** Where estimated labor hours and skill mixes shall be provided for the identified Contract Line Items and the Transition Activity (CLIN 3), they shall be provided with no indication as to the cost (e.g., labor-hours shall be stated in direct productive labor hours (DPLH) figures only). A full time equivalent (FTE) is defined as 1860 DPLH).

**(b) FORMAT AND CONTENT.**

The following provides instructions for submitting the Technical Proposal. Information on the evaluation of the proposal is found in Section M. Failure to provide complete information will result in deleterious effects.

To help facilitate the review process and to ensure that all review criteria are addressed, the Offeror is instructed to use the file names and adhere to the page limitations specified in the table below when preparing it Technical Proposal. All files must be in ".pdf" for Adobe Acrobat (version 9.5.1 or earlier), or ".doc" for Word (version 2010 or earlier).

**COVER PAGE**

This file shall include a cover page indicating the solicitation number, name of the Offeror, and file name. All subsequent pages shall be appropriately numbered and identify the solicitation number and the name of the Offeror.

**TABLE OF CONTENTS**

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

**RATING CRITERIA**

<b>CRITERIA</b>	<b>FILENAME</b>	<b>PAGE LIMIT</b>
<b>Criterion 1</b>		
<b>Management, Organization, and Staffing Plan</b>	<b>CompanyName-ManageOrgStaff</b>	<b>40 pages excluding Resumes’ and Letters of Commitment</b>
<b>Key Personnel Resumes</b>	<b>CompanyName-KPResume</b>	<b>Each Resume’ is limited to 5 pages</b>
<b>Letters of Commitment</b>	<b>CompanyName-Commitment</b>	<b>Each Letter of Commitment is limited to 1 page</b>

<b>Criterion 2</b> <b>Technical Approach</b>	<b>CompanyName- TechnicalApproach</b>	<b>30 pages</b>
<b>Criterion 3</b> <b>Relevant Experience</b>	<b>CompanyName- RelevantExperience</b>	<b>2 pages per contract/project per entity</b>
<b>Criterion 4</b> <b>Relevant Past Performance</b>	<b>CompanyName-PastPerformance</b>	<b>For the discussion, 2 pages per contract/project per entity</b>  <b>The Performance Reference Information Form is limited to the form plus 1 page</b>

The page limits identified in the table above do not apply to cover pages, table of contents, glossary(ies), and list of acronyms. **Proposal pages that exceed the identified page limitation listed in this solicitation shall not be evaluated and will be removed from the end of the respective file (end of the section counting towards the page limitation, e.g. items excluded from the page limitation such as a glossary appearing at the end of the file will not be removed, only those pages that count towards the page count and that exceed the authorized limit shall be removed).** In addition, information contained in any of the files (regardless of the page limitations for each file/criterion) may be taken into consideration in the evaluation of any of the criteria of the Technical Proposal.

All pages shall be single spaced, using 12 point font, 1" margins, and when printed, will fit on size 8 1/2" by 11" paper. A thorough and concise technical proposal can be prepared within the requested page limit. The 12 point font is mandatory to ensure readability of the proposal and is intended for the proposal body text. It is not the Government's intent to require 12 point font size in headers/footers and/or to require Offerors to redo their graphics or tables to conform to this font size. However, readability is at the risk of the Offeror and graphics/tables with less than 12 point font may not be considered in evaluation of the proposal if they are not legible and clear to the evaluator.

**(c) CRITERION 1 – MANAGEMENT, ORGANIZATION, AND STAFFING PLAN**

The Offeror shall describe its proposed approach to managing the contract as a whole and executing the work identified in the PWS. NETL seeks to maximize the value of the work (Mission Execution and Strategic Analysis support services) to the Government; the Offeror should provide discussion of its management approach in this context.

The Offeror shall disclose its ability to identify and manage the critical components associated with the entirety of the PWS including comprehensive reporting as required by the contract. The discussion must describe the Offeror's approach to all transition activities and discuss how continuity of operations will be maintained throughout the transition period. Additionally, the Offeror shall detail its access to and knowledge of applicable tools, systems, and data to administer the contract and perform the work detailed in the PWS.

If subcontracting (or teaming) is anticipated, the Offeror shall provide a narrative that describes the work the Offeror and subcontractors are expected to perform and provide the rationale as to why this is considered an effective approach (including cost effectiveness) for performing requirements of the contract.

The Offeror shall provide an organizational chart, depicting the management structure for oversight of work defined by the CLINs of this contract. The organizational chart shall be complete in all respects but at a minimum, management positions shall be identified and discussed in terms of roles, responsibilities, and authorities as shall all similar positions proposed to be filled with major or critical subcontractor staff.

Major or critical subcontractor: Any subcontractor proposed to perform a significant portion of a CLIN (proposed cost reimbursement or time and material type subcontract with an estimated cost in excess of \$1 million per year).

The Offeror shall provide a work breakdown structure (WBS) including the definition and implementation of the CLINs. The WBS should be based on a logical breakdown of the overall effort into work elements and be in sufficient detail to track all incurred cost and labor hours to their lowest levels.

The Offeror shall describe its approach to obtain, provide, and retain the types of skill mixes identified in Section J, Position Qualifications for performance of the PWS over the term of the contract. As part of its staffing plan, the Offeror shall disclose its approach for ensuring a flexible and adaptive workforce, and to initiate the contract including transition of work from the incumbent contractor(s).

The Offeror shall propose and discuss Key Personnel it considers essential to the successful accomplishment of the work to be performed under work plans issued under the contract. The Offeror must introduce and clearly indicate its selected team of Key Personnel and demonstrate why it should be considered qualified and effective. All Key Personnel are those personnel that will be incorporated into Part I, Section H, clause "Key Personnel/Program Manager." Key Personnel identified by the Offeror will be subject to Part II, Section I, clause "DEAR 952.215-70 Key Personnel." The Offeror shall provide written resumes (File CompanyName-KPResume) for the proposed Key Personnel.

At a minimum, the following Key Personnel shall be proposed and candidates shall meet the minimum qualifications identified in Section J, Attachment D. If the Offeror proposes a single individual to fill more than one Key Personnel position or multiple individuals to fill one Key Personnel position, then the Offeror must clearly explain the rationale for this approach.

Program Manager: Bachelor's Degree in a scientific, engineering, or business field.

The Program Manager is the most senior resident manager. This individual is responsible for the planning, implementation, management, performance, and supervision of the contract on a day-to-day basis.

Contract/Business Manager: Bachelor's Degree in Business, Management or related field.

The Contract Manager is the most senior administrative manager and reports directly to the Program Manager. As such, this individual is to be responsible for financial and invoice management, cost accounting and reporting, and budget control; procurement (e.g. subcontracting services, procuring material and supplies, etc.) and property management; information technology resources management; human resources management including payroll; and administrative support services.

The Government anticipates that it is likely that, in addition to the Key Personnel positions noted in Section J, Attachment D, the Offeror may propose other positions it deems critical to the overall performance of the contract and that meet the requirements of Key Personnel. Proposed Key Personnel who do not meet the minimum qualifications identified in this solicitation will be identified as a weakness or significant weakness in evaluation of the proposal.

### **Key Personnel Resumes**

Key Personnel Resumes are part of Criterion 1 and shall be submitted as part of the technical proposal.

**RESUMES**

The Offeror shall provide resumes for all Key Personnel proposed for the contract -- do not provide resumes of non-key personnel. Each resume shall describe the education, capabilities, and relevant experience of Key Personnel for services similar to the work identified in the PWS and should be commensurate with the proposed position. These are to be demonstrative type resumes and not simply list previous positions and work locations of the individual(s). Resumes shall describe how work experience relates to contract scope and the individual's capability to function effectively in the proposed position. The resume should demonstrate how an individual's experience qualifies him/her for the proposed position under this contract.

The resume shall be in the following format:

- **NAME:** Individual's full name
- **PROPOSED POSITION:** Title and Description
- **ORGANIZATION AFFILIATION:** Specify company where employed
- **EXPERIENCE AND CAPABILITIES:** Provide a summary of the overall experience and capabilities applicable to the work identified in the PWS. List specific examples of relevant work performed, accomplishments, responsibilities and authorities gained.
- **EDUCATION:** Identify the academic institution, degree or certificate earned, and dates. Only degrees from accredited institutions may be cited; degrees from institutions that are not accredited will not be considered.
- **PROFESSIONAL AND TECHNICAL TRAINING:** For each relevant training course cited, list the title of the training, the training institution, the date of the training, and any special certifications or licensing received for the training.
- **PROFESSIONAL REGISTRATION/CERTIFICATION:** Identify professional membership, special training, professional registrations, awards, etc. For each relevant professional registration/certification, list title, State/Society, year, and a brief statement detailing activities.
- **LIST OF RELEVANT PUBLICATIONS, HONORS, AWARDS, AND OTHER ACHIEVEMENTS:** Provide a brief statement detailing the most recent and relevant accomplishments, publications, awards, honors, etc.

**Commitment Letters**

Commitment Letters are part of Criterion 1 and shall be submitted as part of the technical proposal.

**LETTERS**

The Offeror shall submit letters of commitment as part of the technical proposal as follows.

- **Key Personnel** - Letters of commitment for Key Personnel shall demonstrate their availability, priority of this effort within their organization, and commitment to the contract for a minimum of twelve months. The letters of commitment shall also specify the percentage of time each of the key personnel will dedicate to the contract. For those individuals who are not already employees of the proposing organization, the letter of commitment shall demonstrate their availability, willingness to accept the position proposed and remain committed to the contract for a minimum of twelve months. All letters of commitment shall be signed and be submitted in .pdf format. Failure to submit the required letter of commitment for any Key Personnel will result in the Offeror receiving a lower rating for this criterion.
- **Major or Critical Subcontractor(s)** – Letters of commitment from all major or critical subcontractors shall demonstrate their commitment to performing under this contract and describe the priority of this effort organizationally. The letter of commitment related to major or critical subcontractors shall certify that the business entity intends to perform as a major or critical subcontractor to (insert Offeror's name) for the five year period of performance (base period plus option period) of the contract. All letters of commitment shall be signed by individuals authorized to bind their individual organization and be submitted in .pdf format. Failure to submit the required letter of commitment for any major or critical subcontractor will result in the

Offeror receiving a lower rating for this criterion.

**(d) CRITERION 2– TECHNICAL APPROACH**

**TECHNICAL APPROACH**

The Offeror shall describe its technical approach to effectively and efficiently perform the work required of the CLINs as identified in Section J (attachments). In the discussion, the Offeror shall demonstrate its understanding of the requirement -- the Offeror should not simply replicate text provided in the Performance Work Statement (PWS). The Offeror's approach for performing the requirement should be comprehensively addressed, that is, from development of the annual plan to delivering responsive work products including the use of subcontractors, as applicable. The Offeror should present its proposed use of the tools, systems, and data necessary to fulfill the requirements of the PWS and its approach to ensuring the quality of services and work products.

**(e) CRITERION 3 – RELEVANT EXPERIENCE**

**RELEVANT EXPERIENCE**

The Offeror shall provide no more than three contracts for similar services that have been active (excluding closeout activities) during the past five years, prior to closing date of this solicitation, to be evaluated as relevant experience (note: these contracts must be the same as those submitted for relevant past performance). If the Offeror is a new business entity, subsidiary, teaming arrangement (Limited Liability Corporation (LLC) or Joint Venture (JV)), then the Offeror shall provide no more than three (3) contracts for each of the member organizations making up the Offeror's business unit (e.g., two team members join together to form a JV then each member of the JV shall provide no more than three contracts, for a total of six in this example, and submit those for evaluation). In addition to the three contracts submitted for the Offeror organization, the Offeror shall provide no more than three contracts for similar services that are active or have been completed during the past five years for each major or critical subcontractor proposed to perform under any of the Contract Line Items (CLINs) or expected to perform on the CLINs of this contract (e.g. prime contractor shall have up to three contracts identified relevant to the work it plans to perform, major or critical subcontractor A shall have up to three contracts identified relevant to the work it plans to perform, major or critical subcontractor B shall have up to three contracts identified relevant to the work it plans to perform for a total of (including the Offeror's) not more than nine contracts identified for this example.)

Provide information on experience relevant to the Performance Work Statement.

1. Relevant Experience. For each of the three contracts identified, the Offeror shall submit the following experience information:
  - Offeror Experience – The Offeror shall describe its relevant experience in performing work similar in size, scope, and complexity to that described in the PWS. Size, scope, and complexity are defined as follows: Size – greater than \$10 million per year; scope - type and characteristics of work; complexity – risks and performance challenges (all three must be similar in order to be considered relevant). The Offeror shall include a rationale of how they determined each referenced contract to be similar in size, scope, and complexity. The Offeror shall also describe the relevant experience in managing subcontracts under the experience identified.
  - Major or Critical Subcontractor Experience – The Offeror shall describe their major or critical subcontractor relevant experience in performing work similar in size, scope, and complexity to that described in the PWS. Size, scope, and complexity are defined as above.

**(f) CRITERION 4 – RELEVANT PAST PERFORMANCE**

The Offeror's Relevant Past Performance shall be submitted as part of their Technical Proposal and include:

- Performance Reference Information Form (Exhibit E) is limited to the form and one additional sheet.
- Past Performance Questionnaire's (Exhibit D) and Environment, Safety, Health, and Quality (ESH&Q)



Past Performance Information Forms (Exhibit F).

**\*Note: Exhibit F shall be completed by the Offeror and all major or critical subcontractors(s), assessing their business as a whole.**

- Relevant past performance discussion.

The Government receipt of Past Performance Questionnaire Forms that are completed by the reference point-of-contact(s) are not subject to the Section L provision entitled “FAR 52.215-1 Instruction to Offerors – Competitive Acquisition” related to late proposals. However, all other performance information (e.g., performance reference information form, relevant past performance discussion, ESH&Q Past Performance Information Forms that are completed by the Offeror and/or major or critical subcontractors) not received by the deadline will not be considered.

**RELEVANT PAST PERFORMANCE**

The Offeror and all major or critical subcontractors shall describe their past performance in performing relevant work from the same contracts identified as relevant experience. The Offeror and all major or critical subcontractors bear the burden of demonstrating the relevancy of past performance; therefore, the Offeror and all major or critical subcontractors shall provide the following:

<b>Exhibit</b>	<b>Item</b>	<b>Purpose</b>	<b>Completed By:</b>
C	Past Performance Information Questionnaire Cover Letter	Informs the identified reference that past performance information is being collected and identifies who past performance information is being collected on and the address and completion date for submission.	The Offeror and all major or critical subcontractors complete the information in the exhibit and provide it to the identified reference along with the appropriate relevant past performance forms.  NOTE: The identified reference does not need to include this exhibit back to the Government when submitting the relevant past performance forms.
D	Past Performance Questionnaire	Collects past performance information on the contract cited.	The identified reference specific to the contract cited for the reference is to complete and return directly to the Government as instructed in the cover letter.
E	Performance Reference Information Form	Identifies information on the contract for which relevant past performance information is being collected.	The Offeror and all major or critical subcontractors.
F	Environment, Safety, Health, and Quality (ESH&Q) Information Form (completed by the Offeror and all major or critical subcontractors only)	Collects ESH&Q past performance from the Offeror and all major or critical subcontractor’s <b>assessing</b> their business as a whole.	The Offeror and all major or critical subcontractors.

The Offeror and all major or critical subcontractors shall provide Exhibits **C and D** for each contract cited, to the appropriate reference point-of-contact for that contract. The reference point-of-contact for each contract should complete and submit the Past Performance Questionnaire (Exhibit D) (completed by the reference point-of-contact) directly to the Contracting Officer at the address identified in the Past Performance Information Questionnaire cover letter, prior to the closing date of the RFP. Past Performance Questionnaire Forms (completed by the reference point-of-contact) not submitted in this manner shall not be considered. The contract information provided to the reference point-of-contact for completion of the questionnaire must be sufficient to enable cross-referencing of the Past Performance Reference Information Forms and the returned questionnaires.

In addition, for the same three contracts identified as relevant experience, the Offeror and all major or critical subcontractors shall submit the following relevant past performance information to supplement the information collected in Exhibit E, Past Performance Reference Information Form:

- indicate if the work was performed as the prime or as a subcontractor;
- list of major subcontractors and their specific role and responsibility in the project;
- period of performance: start date and end date;
- staffing level;
- types of deliverables; and
- information on problems encountered on the identified contracts and subcontracts, and the corrective actions taken to resolve those problems.

**Exhibit F shall be provided by the Offeror and all major or critical subcontractors and shall assess their business as a whole.**

Offerors and all major or critical subcontractors shall not provide general performance information on the identified contracts as this information will be obtained from the references. The Government may contact some or all of the references provided as well as other sources to obtain past performance information to be evaluated. References other than those identified by the Offeror and major or critical subcontractors may be contacted by the Government with the information received. The Government may obtain information from federal databases regarding contractor past performance and use that information in its evaluation.

#### **L.34 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME III COST PROPOSAL**

- (1) General: The following instructions are provided to assist in the preparation of a comprehensive fully-supported cost proposal. The cost proposal is not subject to page limitations. Information on the evaluation of the cost proposal is found in Section M. Inadequate proposals may be rejected by the Contracting Officer and; therefore, not considered for award.

**For each major or critical subcontractor (as defined below), cost information shall be required and furnished in the same format and level of detail as prescribed herein for the Offeror (Note – certain items are to be proposed only by the prime Offeror (e.g. award fee, materials/supplies, travel and training) it is the responsibility of the prime Offeror to ensure that the major or critical subcontractor does not include these items in their cost exhibits).** It is recommended that the Offeror

provide these instructions for the cost proposal preparation to all major or critical subcontractors. If a major or critical subcontractor desires not to disclose proprietary information (e.g. indirect rates, limitations on indirect rates, etc.) to the Offeror then the major or critical subcontractor may provide the Offeror with non-proprietary (roll up or loaded) costs and submit the required detailed cost information separately in FedConnect (directly to the Government). Information for major or critical subcontractors that is not received in the prescribed format or by the time required will not be evaluated and will cause the Offeror's proposal to be considered non-responsive to the request for proposal (RFP).

- (2) Definitions: Refer to FAR Part 31, Contract Cost Principles and Procedures, for definitions of cost elements. In addition, the following terms are defined for use in preparing a cost proposal under this RFP.

**a. Collective Bargaining Agreement (CBA)** – Negotiated with a union to establish the terms and conditions (includes labor rates and benefits) for union covered positions. CBA's supersede a Department of Labor (DOL) wage determination (WD) for the covered position(s) and establish the minimum wages and benefits to be paid for the covered position(s).

**b. Cost Exhibits:** Cost Exhibits are the required format (except as noted herein) for the development of the

cost proposal detail. The information requested in the Cost Exhibits includes the other than certified cost and pricing data necessary for complete evaluation of the proposal.

c. Cost Discussion: The narrative support for the other than certified cost and pricing data that provides the assumptions/contingencies/rationale used in developing the proposed costs/price and the basis for the cost/price estimate for each element, that is, how the labor rates were developed, how indirect rates were developed and calculated, etc.

d. Direct Productive Labor Hours (DPLH): The estimated number of productive labor hours (to perform the work) that are charged directly.

e. Exempt: An employee who is exempt from the provisions of the Fair Labor Standards Act.

f. Facilities Capital Cost of Money (FCCOM): Refer to 48 CFR 9904.414--Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

g. Full Time Equivalent (FTE): An FTE is considered a 100% dedicated individual performing on a full time basis with all hours performed on this contract. For example, an FTE employee may equate to 1860 DPLH and 220 non-productive labor hours (total 2,080 labor hours).

h. Key Personnel: Key Personnel are employee(s) considered essential to the successful accomplishment of the work to be performed under the contract. Key Personnel will be incorporated into Part I, Section H, clause “Key Personnel/Program Manager” and be subject to Part II, Section I, clause “DEAR 952.215-70 Key Personnel.”

i. Labor Hours: The total number of hours that can be worked based on a typical work schedule. For example, the annual labor hours may be expressed as 52 weeks X 40 hour work week = 2,080 labor hours.

j. Major or critical subcontractor: Any subcontractor proposed to perform a significant portion of a CLIN (proposed cost reimbursement or time and material type subcontract with an estimated cost in excess of \$1 million per year).

k. Most Probable Cost: Expected cost (cost reimbursable effort only) to the Government after consideration of any upward or downward adjustments to the proposed cost (excluding fee) to realistic levels based on the results of a cost realism analysis.

l. Non-exempt: An employee who is covered by the provisions of the Fair Labor Standards Act.

m. Non-Productive Labor Hours: The estimated number of non-productive labor hours (e.g. vacations, holidays, sick leave, etc.) that are charged indirectly.

n. Off-Site: Includes any location not on one of the NETL sites as defined in on-site below.

o. Off-Site Overhead Rate: The indirect rate used for work performed at off-site location(s).

p. On-Site: Federally-owned NETL sites at Albany, Oregon; Morgantown, West Virginia; and/or Pittsburgh, Pennsylvania and/or Government-leased property in Anchorage, Alaska; Sugar Land, Texas, and Morgantown, West Virginia (referred to as the Research Ridge complex which is immediately adjacent to the NETL Morgantown boundary).

q. On-Site (NETL Specific) Indirect Rate: The indirect rate used for work performed at on-site NETL location(s) which includes the entire expected costs of the Project Management Office (PMO).

r. Period of Performance: The starting and ending date for the prescribed services as defined in Section F.

s. Performance Work Statement (PWS): The performance based work statement used to identify the work

requirements.

t. Project Management Office (PMO): Key Personnel and administrative support personnel (including those located on-site) required in performance of this contract. For the purposes of this contract, administrative support includes business office administrative support responsible for drafting invoices, subcontracts, and contract reports (e.g. Cost Management Report, Invoice Detail, EEO compliance, etc.), and office managers/secretarial staff. PMO expenses are captured indirectly in the on-site (NETL Specific) indirect rate.

u. Total Evaluated Price: The total evaluated price (cost reimbursable effort only) is the sum of the most probable cost plus the proposed maximum award fee for the base and option periods.

v. Wage Determination (WD): WD's issued by the Department of Labor (DOL) to establish the minimum prevailing wages and associated benefits (by geographic location) for employees covered by the Service Contract Act (SCA).

- (3) Certified Cost and Pricing Data: The Contracting Officer has determined that certified cost and pricing data is not required for this RFP. However, in accordance with FAR 15.403-3 and 15.403-5, information other than certified cost and pricing data is required to accurately evaluate the proposals received. Therefore, information other than certified cost and pricing data (including supporting documentation/attachments) shall be submitted in accordance with the cost proposal preparation instructions/format provided herein.
- (4) Content: The cost proposal (inclusive of other than certified cost and pricing data) shall consist of the following:
- Contract Pricing Proposal Cover Sheet
  - Cost Exhibits inclusive of:
    - Estimated cost plus award fee (CPAF) to perform the work set forth in the performance work statement (PWS) by year for the base and option period for each identified CLIN (Transition CLIN is not to be fee bearing)
    - Escalation Rate(s)
    - Indirect rates (e.g. fringe benefits, on-site (NETL Specific) overhead, off-site overhead, General and Administrative (G&A), and any other indirect rates proposed by the Offeror and/or major or critical subcontractors)
    - Key Personnel labor and relocation costs
  - Cost Discussion
  - Indirect Rate Agreement(s), as applicable

All of the cost and fee information shall be proposed in accordance with the Offeror's and/or major or critical subcontractors established accounting and estimating practices.

None of the cost/price information contained in Volume III should be included in any other proposal volumes unless specifically requested in the RFP (e.g. Maximum Award Fee and Limitations of Indirect Rates are requested as part of Volume I, "Fill in of Contract Clauses", and staffing direct productive labor hours (DPLH)/full-time equivalent (FTE) information may be necessary in Volume II, Technical Proposal but the technical proposal shall not contain any associated cost/price information).

- (5) Modification(s) to the Cost Proposal: If applicable, any modification to the cost proposal shall clearly indicate the cost impact of the modification in the same level of detail shown in the original proposal. Any modification to the cost proposal shall be clearly identified.
- (6) Exceptions and Deviations: Identify and explain (including the benefit to the Government) any exceptions and/or deviations taken to the cost proposal preparation instructions for this RFP or to any other part of this RFP, which could have an impact on the cost proposal in the Administrative Discussion (File 5) required under Volume I, Offer and Other Documents.

- (7) Adjustments: In the event the cost proposal does not adhere to these cost proposal preparation instructions but is not so deficient to be determined non-responsive, treatment during evaluation will be subject to the following:

Other than certified cost and pricing data will be used to determine if the proposed costs (inclusive of escalation and indirect expenses) are reasonable, realistic and complete. The Government may make upward or downward adjustment of the proposed cost (excluding fee) to realistic levels based on the cost realism evaluation in the determination of most probable cost. For example, if the proposed labor rates are not realistic for the proposed approach (e.g. labor rates for SCA covered positions do not equal or exceed the established WD, or CBA labor rates for incumbent employees are not consistent with the seniority of the incumbent employees, without sound rationale provided for in the respective Cost Discussion), they will be adjusted accordingly in the determination of most probable cost. It is further noted that for purposes of determining most probable cost, any upward adjustment to the proposed on-site (NETL specific) overhead and G&A rates, based on the cost realism evaluation, will not result in rates that exceed the proposed ceiling rates.

While fee is not subject to adjustment in the determination of the most probable cost based on percentage of adjusted costs, fee will be adjusted (only) in the event that fee is proposed on elements that have been identified as not fee bearing (e.g. fee applied to transition, travel or training costs).

- (8) Format

For consistency, the Offeror and all major or critical subcontractors submitting separately are instructed to use the file names specified below. Filename extensions shall clearly indicate the software application used for preparation of the documents, i.e. ".pdf" for Adobe Acrobat (version 9.5.1 or earlier), ".doc" for Word (version 2010 or earlier), or ".xls" for Excel files (version 2010 or earlier).

Volume III, cost proposal, shall include the following components:

MANDATORY FILES	FILE NAME*
File 1 Contract Pricing Proposal Cover Sheet	<company name>File 1 Cover Sheet.---
File 2 Cost Exhibits A through D	<company name>File 2 Cost Exhibits.xls
File 3 Cost Discussion	<company name>File 3 Cost Discussion.---

The following file is required if the Offeror and/or major or critical subcontractors have an Indirect Rate Agreement.

File 4 Indirect Rate Agreement	<company name>File 4 Rate Agreement.---
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\*For major or critical subcontractor submissions being submitted separately, both the Offeror and the major or critical subcontractor company names should precede the specified file name, example <company name>< major or critical subcontractor name>File 1 Cover Sheet.---

**File 1 – CONTRACT PRICING PROPOSAL COVER SHEET (<company name>File 1 Cover Sheet.---**)

Submit one fully executed Contract Pricing Proposal Cover Sheet as File 1 of the cost proposal. Ensure the total proposed cost/price is reflected in block 6 and the cost/price breakdown for each CLIN is identified in block 8 consistent with the cost/price proposed in the Cost Exhibits. The Contract Pricing Proposal Cover Sheet (NETL F 534.1-1) is available for downloading on NETL’s homepage at: [http://www.netl.doe.gov/business/forms/534\\_1-1.pdf](http://www.netl.doe.gov/business/forms/534_1-1.pdf).

**File 2 – MANDATORY COST EXHIBITS A through D (<company name>File 2 Cost Exhibits.---**)

Submit Cost Exhibits as File 2 of the cost proposal. To help facilitate the review process and to ensure that

sufficient information is received to address all the review criteria, Cost Exhibits shall be generated using the format provided in Section L, Exhibit B except as specifically noted below and adhere to the information provided herein. Insert additional rows as needed. Do **NOT** adjust or remove the header that has been included in the Cost Exhibits.

Cost Exhibits shall be working Excel versions including formulas and computations. **Do not provide spreadsheets where formulas cannot be viewed, such as macros.**

**For the purposes of this RFP, assume 100% of the DPLH will be performed on-site at the NETL locations specified.**

Refer to Section H, clauses “Use of Government Owned Equipment/Facilities” and “Government Provided Services” for identification of items being furnished by the Government (e.g. office spaces, office/work area furniture, local area network services, parking facilities, etc.).

Final monetary extensions shall be expressed in whole dollars only. In the event that cents are reflected on the Cost Exhibits, the Government will round up to the nearest dollar for evaluation purposes.

The Cost Exhibits shall be immediately printable and readable on standard 8 ½ by 11 inch or legal 8 ½ by 14 inch paper.

Offeror Only - If major or critical subcontractors are proposed, the Offeror shall indicate the total cost (Exhibit A) and the total cost, estimated by month (Exhibits B1, B2, and B3), on a separate line (following the Cost Exhibit format) in the Offeror’s Cost Exhibits for each major or critical subcontractor proposed. NOTE: While the summary total cost for the major or critical subcontracts placeholder in the Cost Exhibits has been included in the Direct Labor section (after application of on-site overhead); the cost is intended to reflect the total amount (inclusive of subcontracts/consultants and indirect expenses) of the major or critical subcontractor (i.e. not just the direct labor). Offerors should move the major or critical subcontractor summary total cost to the appropriate area in their Cost Exhibits (e.g. A, B1, B2, and B3) to be consistent with their accounting system/practices. For example, if on-site (NETL specific) overhead is applied to major or critical subcontract costs, the major or critical subcontract line would precede the on-site (NETL specific) overhead or if major or critical subcontracts would be captured in the Offeror’s accounting system as an Other Direct Cost (ODC), the major or critical subcontractor summary total cost line would be moved to the Subcontracts/Consultant section, ensuring that each major or critical subcontract cost is listed on a separate line as well as segregated from other subcontract costs/prices. In addition, if major or critical subcontractors submit the required detailed cost information directly to the Government, the Offeror is responsible for reviewing the non-proprietary (roll up or loaded) proposed costs for completeness and reasonableness and for ensuring that the information submitted separately by their major or critical subcontractors is consistent with the amounts shown in the Offeror’s cost proposal. Any differences/deviations between the major or critical subcontractor’s information and that included in the Offeror’s proposal shall be clearly described in detail in the Offeror’s Cost Discussion. In the event that differences/deviations are not explained or identified, treatment during evaluation will be subject to the process described above in the adjustment section.

**Exhibit A** -- Summary Costs/Prices by CLIN

Exhibit A shall be utilized to provide a summary schedule (by individual cost element) of the total proposed cost/price for each CLIN. If Facilities Capital Cost of Money (FCCOM) is proposed, insert an additional row in the Cost Exhibits to reflect FCCOM on a separate line. Ensure the values reflected in the summary schedule (Exhibit A) match the proposed costs/prices identified in Exhibits B1 through B3.

**Exhibit B1 and B2** -- Detailed Costs/Prices for each CLIN

Exhibits B1 and B2 shall be utilized (except as noted herein) to propose costs/prices (by individual cost element) for each CLIN consistent with the proposed technical approach and the specified period of performance. If Facilities Capital Cost of Money (FCCOM) is proposed, insert an additional row in the

Cost Exhibits to reflect FCCOM on a separate line. NOTE: Exhibits B1, and B2 are in a similar format to that which would be expected to be utilized in responding to the Cost Plan requirement of the Ordering Procedures identified in Section H.

The costs/prices for each CLIN shall consist of the following cost/price elements:

Direct Labor: Propose the estimated cost/price for all anticipated direct labor.

For each position proposed to be charged directly, identify the labor category, work location, labor rate (unloaded), DPLH (per month), and number of FTEs and the respective FTE percentage by location (e.g. if proposing a full FTE (100%) and a half FTE (50%) in the same location the FTE allocation should be reflected as 150%). As applicable, ensure proposed labor rates meet or exceed the minimum required rate from the applicable WDs/CBAs. NOTE: There may be instances where one labor category may be required at more than one location and in those instances, it is expected that separate line items will be utilized (e.g. an Engineer 5 may be identified on one line for Morgantown and another line for Pittsburgh).

ODCs, as applicable:

- Subcontracts/Consultants – Propose the estimated cost/price for all anticipated (non-major or non-critical) subcontracts and/or consultants. This cost/price element shall not include the labor cost for DPLH of major or critical subcontractors. It is expected that any subcontract/consultant cost included in this section is for fixed price or time and material fixed rate subcontracts and/or consultants (less than or equal to \$1M) and not subject to any fee sharing. NOTE: Subcontractors whose cost/price is included in this subcontract section are not to be included in the list of pre-approved subcontracts located in Sections H and I of this RFP and resulting contract.
- Travel (not fee/profit bearing) – For the purposes of this RFP, estimated travel costs are to be included on the Offeror's Cost Exhibits (only) and not in those submitted by any major or critical subcontractor.
- Training (not fee/profit bearing) – For the purposes of this RFP, estimated training costs are to be included on the Offeror's Cost Exhibits (only) and not in those submitted by any major or critical subcontractor. NOTE: Travel associated with any training proposed shall be included in the travel cost.
- Supplies/Material – Supplies/material costs are provided for each CLIN and shall be utilized as given in the Cost Exhibits (B1 and B2), excluding transition costs. DOE estimates are based on historical information and future projections; however, they do not represent a guarantee for funding future work at these dollar thresholds under the terms of this RFP. Supplies/Material costs, as provided, are to be included on the Offeror's Cost Exhibits (only) and not in those submitted by any major or critical subcontractor. NOTE: If major or critical subcontractors are proposed, the Offeror is responsible for ensuring that supplies/material costs are not double expensed (e.g. supplies/materials costs are not included in major or critical subcontractor Cost Exhibits). Any proposal that does not utilize the supplies/material costs as provided will be subject to the process described above in the adjustment section. Exceptions or deviations to the provided supplies/material costs provided in the Cost Exhibit Template must be addressed in the Administrative Discussion (File 5) required under Volume I, Offer and Other Documents.

Fee estimated by month:

All fee is "at risk" and shall be proposed by the Offeror only, regardless of whether major or critical subcontractors are proposed (i.e. major or critical subcontractors are subject to fee sharing and shall not include a separate fee in their Cost Exhibits). **No base fee shall be authorized.** The Offeror may propose whatever fee amount it determines appropriate provided that fee 1) is estimated by month, 2) is not being calculated upon an estimated cost that includes the proposed cost for travel or training, and 3) does not exceed the maximum award fee proposed in the Offeror's Volume I, "Fill in of Contract Clauses." Also,

identify the maximum award fee consistent with the amount proposed in Volume I, “Fill In of Contract Clauses.”

Indirect Expenses: Ensure indirect rates are proposed consistent with the indirect rates in Exhibits C1 through C4 and are clearly identified. NOTE: If fringe benefits are included in the on-site (NETL specific) overhead rate, then it shall be clearly indicated as such and applied appropriately.

Exhibit B3 – Detailed Cost for Transition CLIN (no fee)

Exhibit B3 shall be utilized to propose a **no fee** Cost (by individual cost element) for the Transition in accordance with Section B.1 and the PWS consistent with the proposed technical approach and the specified period of performance. If FCCOM is proposed insert an additional row in the Cost Exhibits to reflect FCCOM on a separate line.

All of the proposed transition costs must be clearly documented in sufficient detail to demonstrate reasonableness, allowability, and realism of the costs. The support document pricing breakdown shall include the proposed relocation costs for any employee(s) (including Key Personnel) necessary for the initial assumption of work for whom relocation costs are anticipated (regardless of whether the incurrence of relocation cost occurs during or after the transition period). NOTE: Reference FAR 31.205-35, Relocation Costs (relocation costs shall be subject to determination of allowability).

Examples of transition cost elements could include: transition team costs, ODCs, and indirect expenses. Transition team costs might include the labor (hours and rate per hour) of the employees needed to execute the transition plan (e.g. recruiting, training new personnel, etc.). ODCs might include travel, training, supplies, equipment rental, temporary office space, etc. Indirect expenses might include the fringe benefits, on-site (NETL specific) overhead, and G&A. NOTE: Ensure costs associated with individuals (e.g. Key Personnel and administrative support staff) included in the on-site (NETL specific) overhead rate are not double expensed. Specifically, if Key Personnel or any other labor costs of administrative support personnel included in the PMO cost in the on-site (NETL specific) overhead rate are billed directly in the Transition Costs, ensure that 1) the FTE for those positions do not exceed 100% for the respective fiscal year and 2) sufficient rationale is included in the Cost Discussion that explains how double expensing of those costs is not occurring. For example, if 100% of the Program Manager costs (\$100,000) are included in the on-site (NETL specific) overhead rate for the respective fiscal year, none of the labor cost of this position should be billed directly in the Transition Costs. Treatment during evaluation for issues related to duplicate expense (e.g. double billing, unreasonable indirect rates, unreasonable labor costs, etc.) would be subject to the process described above in the adjustment section.

Exhibit B4 -- Labor Categories

Exhibit B4 shall be utilized to provide information on the labor categories to be utilized under the contract. For each position identified (by the Government) in Exhibit B4, indicate if the position is exempt or non-exempt and reconcile the labor categories (names) to those generally utilized within your company. **Do not alter the labor categories provided by the Government.** If a particular labor category will not be utilized under the contract, do not delete the position or leave the requested information blank, simply indicate “not applicable”.

The list of labor categories identified (by the Government) in Exhibit B4 does not limit the selection of labor categories to be utilized under this contract. If additional positions that are not identified on the list are expected to be utilized during performance of this contract, identify those position(s) on separate lines in alphabetical order at the bottom of Exhibit B4 and provide the position information in the same level of detail as required above. NOTE: The Offeror is responsible for ensuring that position qualifications for any additional labor categories proposed in Exhibit B4 by the Offeror and any major or critical subcontractor is reflected in Volume I, “Fill In of Contract Clauses.”

Exhibit C1 through C4 -- Indirect Rate



Exhibits C1 through C4 shall be utilized to provide for the proposed indirect rates. While the Cost Exhibits for fringe benefit, on-site (NETL specific) overhead, off-site overhead, and G&A rates are required exhibits, the format of these exhibits can be modified to reflect the Offeror's and/or major or critical subcontractor's accounting system(s). If other indirect rates such as material handling or subcontractor handling are proposed, create additional indirect rate exhibits in the same level of detail required for the other indirect rates. As additional exhibits are created, the numbering format should continue in sequence (e.g. C5, C6, etc.).

For each indirect rate required below and for any other indirect rate proposed, use the appropriate Cost Exhibit to provide 1) the indirect costs (by individual cost element) that comprise the cost pool for the rate for the most recently completed fiscal year, current (projected) fiscal year, and subsequent five years itemized by the individual expense items by cost element and dollar amount, 2) rate calculation, 3) allocation base consistent with the Offeror's accounting system, 4) calculated percentage for the indirect rate and 5) percentage for the indirect rate ceilings (consistent with the ceilings proposed in Volume I, "Fill in of Contract Clauses") for all indirect rates except fringe benefits.

#### Exhibit C1 -- Fringe Benefits

Exhibit C1 shall be utilized to propose fringe benefits. NOTE: If applicable, ensure the costs of the fringe benefits required by WDs/CBAs are satisfied.

In the event that fringe benefits are proposed in the on-site (NETL specific) overhead rate, a note to this effect shall be indicated on this exhibit.

#### Exhibit C2 -- On-Site (NETL specific) Overhead Schedule

Exhibit C2 shall be utilized to propose an on-site (NETL specific) overhead rate. Also, identify the on-site (NETL specific) overhead ceilings consistent with the ceilings proposed in Volume I, "Fill In of Contract Clauses".

The on-site (NETL specific) rate shall include the entire expected costs of the PMO required for performance on this contract. Since it is expected that each entity provide an on-site (NETL specific) overhead rate for on-site work, there should not be any conflicts with disclosure statements on charging 100% of PMO expenses to the indirect pool. Exceptions or deviations to the on-site (NETL specific) overhead rate or to the inclusion of the entire PMO costs must be addressed in the Administrative Discussion (File 5) required under Volume I, Offer and Other Documents.

The requirement for an on-site (NETL specific) indirect rate shall flow down to all major or critical subcontractors performing cost reimbursement work on-site, with the exception of higher educational institutions.

#### Exhibit C3 -- Off-Site Overhead

Exhibit C3 shall be utilized to propose an off-site overhead rate for work to be performed at off-site location(s). Also, identify the off-site overhead ceilings consistent with the ceilings proposed in Volume I, "Fill In of Contract Clauses". Although the solicitation includes the assumption for all work to be performed on-site, there is an expectation that some work will be required to be performed off-site, NETL is requiring off-site overhead rates and ceilings be established in the event off-site work becomes necessary. It is expected that these rates will not be applied to work performed on-site.

#### Exhibit C4 -- G&A

Exhibit C4 shall be utilized to propose G&A. Also, identify the G&A ceilings consistent with the ceilings proposed in Volume I, "Fill In of Contract Clauses."

#### Exhibit D – Summary Cost Detail for Key Personnel

Exhibit D shall be utilized to provide summary cost information for all Key Personnel. The labor costs should already be included in on-site (NETL specific) overhead rate (Exhibit C2) and the relocation costs should already be included in the support documentation provided for the Transition Costs (Exhibit B3). For any Key Personnel proposed, provide the individual (employee) name, company where employed, and proposed unburdened labor rate/salary and relocations costs consistent with the costs included in Exhibits B3 and C2.

**File 3 – COST DISCUSSION (<company name>File 3 Cost Discussion.---)**

Submit the Cost Discussion as File 3 of the cost proposal. The Cost Discussion may be provided as a WORD or Adobe Acrobat file. The Cost Discussion shall be submitted in one file with one exception. Electronic copies of existing company publications of company compensation policies (only) may be submitted as attachment(s) to the Cost Discussion.

All pages of the Cost Discussion must be numbered.

To help facilitate the review process and to ensure addressing all the review criteria, the Offeror shall use the following outline when preparing File 3. Ensure the elements are addressed in the order as they appear below. If an element is not proposed, do not eliminate the discussion section; simply indicate “Not Proposed.”

**COVER PAGE**

This file shall include a cover page indicating the RFP number, name of the Offeror, and file name. All subsequent pages shall be appropriately numbered and identify the RFP number and the name of the Offeror.

**TABLE OF CONTENTS**

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

Submit a Cost Discussion adhering to the following outline:

- A. **Estimating Procedure** - Provide an explanation of the estimating procedures used, describing, at a minimum, 1) the existing data used as the basis of estimating the cost/price, 2) the judgmental factors applied in projecting from known data to the estimate, and 3) the assumptions used in estimating the proposed costs/prices.
- B. **General**
  - i. Discuss any differences in the treatment of exempt and non-exempt employees.
  - ii. Discuss any differences in the cost proposal of any major or critical subcontractor’s information/cost exhibits to the cost included in the Offeror’s Cost Exhibits. In the event that differences are not explained or identified, treatment during evaluation will be subject to the process described above in the adjustment section. NOTE: Exceptions or deviations to any aspect of the cost proposal must be addressed in the Administrative Discussion (File 5) required under Volume I, Offer and Other Documents.
- C. **Labor Cost**
  - i. Identify the DPLH for a FTE and provide rationale for the DPLH utilized. This discussion shall clearly indicate how the number of hours associated with a FTE (e.g., 1820, 1860, 1920, etc.) were derived and how that annual amount was estimated by month.

- ii. Identify the source of the proposed labor rate (e.g. bidding rates, average labor rates, etc.). Taking into consideration Section I, clause entitled “FAR 52.222-17 Nondisplacement of Qualified Workers, include a discussion on how the proposed rates are reflective of hiring incumbent employee(s). In addition, furnish any supporting information that the wage and salary structure is competitive with local conditions. If the Offeror and/or any major or critical subcontractor are performing a Government contract in the local area or at the same site of performance as this contract, identify the award number, explain any difference in the proposed wage and salary plan including fringe benefits, and provide the rationale for these differences.
- D. **Escalation** – Identify the escalation rate that is being proposed for each contract year on direct labor and indirect expenses and the rationale, assumptions, and methodology for how the rate was established. Indicate historical escalation rates for the previous three years. If escalation is based on industry indices or other national standards, provide the reference to the appropriate resource. If no escalation is proposed, indicate that decision and discuss the rationale supporting the position including risk associated with mandatory changes associated with Department of Labor wage, health, and welfare increases. Also, discuss the timing of when and how escalation is applied indicating if this is consistent with your corporate policies.
- E. **ODCs** – Provide a discussion of the following elements.
- i. **Subcontracts** – If proposed, provide 1) a summary listing of anticipated subcontracts (with estimated cost/price listed for each subcontract), 2) a rationale/justification for the subcontracts proposed, and 3) the basis of rates used (e.g. verbal or written quote, historical information, engineering estimate, etc.).
  - ii. **Consultants** – If proposed, provide 1) a summary listing of anticipated consultants, 2) a rationale/justification for the consultants proposed, 3) the basis of rates used (e.g. most favored customer rate), and a statement of need including the reason why in-house or teaming resources are unavailable to perform the effort.
  - iii. **Travel** – If proposed, provide 1) a listing of destinations, duration of travel, number of travelers, and number of trips for each anticipated travel destination (including a breakdown of air fare (each trip), per diem, car rental, ground transportation, and miscellaneous expenses) with estimated cost, 2) a rationale/justification for the travel proposed, and 3) the basis of rates (rates shall be in accordance with the Federal Travel Regulations and all other applicable Federal regulations). NOTE: The Offeror’s Cost Discussion shall include a separate travel discussion (in the same level of detail noted above) for travel proposed for any major or critical subcontractor.
  - iv. **Training** – If proposed, provide 1) a summary listing of the anticipated training requirements with estimated cost, 2) the rationale/justification for the training proposed, and 3) the basis of rates used. NOTE: The Offeror’s Cost Discussion shall include a separate training discussion (in the same level of detail noted above) for training proposed for any major or critical subcontractor.
- F. **FCCOM** – If proposed, provide 1) the calculations and 2) the rate applied, and 3) the Treasury rate used (as published in the Federal Register).
- G. **Fee** - Provide a detailed rationale as to how/why the Offeror selected the fee proposed and discuss how fee was applied (e.g. fee is applied to all costs except travel and training, fee is applied to direct labor costs only, or fee is applied to loaded labor costs, etc.).
- H. **Transition** - If PMO costs are proposed directly in Exhibit B3 (and in the on-site (NETL specific) overhead), discuss the methodology used to ensure that double expensing of these costs was not proposed.

I. **Indirect Rates**

- i. Indicate if proposed indirect rates are covered by indirect rate agreement. NOTE: Ensure a copy of any indirect rate agreement indicated in this discussion is attached as File 4 (see below).
- ii. Identify your fiscal year (e.g. January 1 through December 31 or October 1 through September 30).
- iii. Indicate how the proposed fiscal year indirect rates are used to compute the proposed indirect costs by contract year in Exhibits B1 and B2.

iv. **Fringe Benefits**

- For each cost element included in the fringe benefits cost exhibit, provide the breakdown (and basis, if applicable) of the cost. For example, if the proposed fringe benefits include FICA at \$22,950 for the first year, the breakdown might show 7.65% applied to \$300,000 in labor costs.
- Discuss the methodology for the rate calculations. Any anomalies associated with the application of fringe benefits shall be clearly discussed (e.g. fringe benefits are not applied to exempt employees or there are multiple fringe benefit rates proposed to account for differences in the treatment of paid time off). If applicable, discuss how the minimum health and welfare benefits required by WDs/CBAs are satisfied.
- Detail how the allocation base was derived
- Describe approach to crediting employees' service with the current contractor toward any length of service requirements for such fringe benefits as vacation, sick leave, and severance pay allowance for employees of the current contractor who may continue on the contract with the Offeror and/or major or critical subcontractor(s).

v. **On-Site (NETL Specific) Overhead**

- For each cost element included in the on-site (NETL specific) overhead cost exhibit, provide the breakdown (and basis, if applicable) of the cost. For example, if the proposed on-site (NETL specific) overhead rate includes Indirect Labor costs of \$350,000 for the first year, the breakdown might show \$100,000 for Program Manager, \$75,000 for human resource manager, \$100,000 for business manager, and \$75,000 for accounting personnel.
- Discuss the methodology for the rate calculations. Any anomalies associated with the application of the on-site (NETL specific) overhead rate shall be clearly discussed (e.g. overhead rate includes fringe benefits for all direct labor).
- Detail how the allocation base was derived.

vi. **Off-Site Overhead Rate**

- For each cost element included in the off-site overhead rate, provide the breakdown (and basis, if applicable) of the cost. For example, if the proposed off-site overhead includes Utility expenses at \$50,000, the breakdown might

reflect \$15,000 for electric, \$10,000 for natural gas, \$10,000 water and sewage, \$10,000 for telecommunications, and \$5,000 for non-hazardous waste disposal.

- Discuss the methodology for the rate calculations. Any anomalies associated with the application of the off-site overhead shall be clearly discussed, including the use of multiple off-site rates (e.g. if multiple off-site rates are utilized provide a rationale that clearly articulates how and when each rate is utilized such as: company A uses three off-site rates established by cost centers (10, 11, and 12). The use of cost center 10 applies to work completed from the Houston office for labor categories X, Y, and Z; the use of cost center 11 applies to work completed from the Richmond office for labor categories L, M, and Z; and the use of cost center 12 applies to work completed from our professional labor categories authorized to work from home).
- Detail how the allocation base was derived.

vii. **G&A**

- For each cost element included in the G&A, provide the breakdown (and basis, if applicable) of the cost. For example, if the proposed G&A includes Bid and Proposal expenses at \$250,000 for the first year, the breakdown might reflect \$125,000 for two bid proposals.
- Discuss the methodology for the rate calculations. Any anomalies associated with the application of the G&A shall be clearly discussed (e.g. G&A not applied to subcontractor costs).
- Detail how the allocation base was derived.

viii. **Any Other Proposed Indirect Rate(s)**

- For each cost element included in the indirect rate, provide the breakdown (and basis, if applicable) of the cost.
- Discuss the methodology for the rate calculations. Any anomalies associated with the application of the rate shall be clearly discussed.
- Detail how the allocation base was derived.

J. **Indirect Rate Ceilings**

- i. Indirect Rate Ceilings – For the on-site (NETL specific) overhead ceiling, off-site overhead ceiling, G&A ceiling, and ceilings proposed for any other indirect rate (other than fringe benefits), provide the rationale for the proposed ceiling. If the ceiling is established at the same rate as the proposed rate, discuss the basis for that decision and address the risk associated with proposing ceilings that have no room for growth or uncertainty.

K. **Company Compensation Policies - Describe company compensation policies in the following areas (existing company publications may be furnished):**

- i. Salary increases:
  - Merit
  - Cost-of-Living
  - General
  - Other

- ii. Fringe Benefits:
  - Paid absences (vacations, sick leave, etc.) including the corporate procedure to be utilized in the event of site closures, inclement weather, early dismissals (if issued for Federal work force), administrative leave procedures, and infrequent leave policies.
  - Insurance contribution
  - Retirement contribution (e.g. 401k, pension plan, etc.)
  - Other
- iii. Travel/Per Diem
- iv. Relocation
- v. Bonuses/Other Employee Incentives
- vi. Severance
- vii. Overtime
- viii. Uncompensated overtime
- ix. Shift Premium

**File 4 Indirect Rate Agreement(s) (<company name>File 4 Rate Agreement.---)**

Submit any current Indirect Rate Agreements (including forward pricing agreements) or notices established by your Cognizant Federal Agency as required by Section H, clause "Annual Indirect Rate Submissions" as File 4 of the cost proposal.

**L.35 CLASSIFIED MATERIAL**

Performance under the proposed contract may involve access to classified material.

**L.36 DISPOSITION OF SOLICITATION MATERIALS AND PROPOSALS**

Drawings, specifications, and other documents supplied with the solicitation may be retained by the Offeror (unless there is a requirement for a document to be completed and returned as a part of the offer).

Offeror's Proposals will not be returned (except for timely withdrawals).

**L.37 CONTENT OF RESULTING CONTRACT**

Any contract awarded as a result of this Request for Proposal (RFP) will contain PART I - The Schedule, PART II - Contract Clauses, and PART III, Section J - List of Attachments (excluding those attachments included in this RFP relating only to submission of proposals).

Blank areas appearing in these sections, indicated by "[TBD]" will be completed prior to contract award.

Offerors should carefully review the information contained therein, and, as appropriate, state any proposed exceptions/deviations per FAR 52.215-1.

**L.38 INFORMATION OF AWARD (NOV 1997)**

Written notice to unsuccessful Offerors and contract award information will be promptly released in accordance with DOE regulations applicable to negotiated acquisitions.

**L.39 COMMITMENT OF PUBLIC FUNDS**

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

**L.40 LIST OF EXHIBITS (Note: Exhibits are also provided as fillable attachments to this solicitation)**

EXHIBIT	DESCRIPTION
A	Performance Guarantee
B	Cost Exhibits
C	Past Performance Information Questionnaire Cover Letter
D	Past Performance Information Questionnaire
E	Past Performance Reference Information Form
F	Environment, Safety, Health and Quality (ESH&Q) Past Performance Information Form
G	Environment, Safety, Health, and Quality (ESH&Q) Performance Questionnaire

**L.41 EXHIBIT A – PERFORMANCE GUARANTEE****PERFORMANCE GUARANTEE AGREEMENT**

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-\_\_\_\_\_ for the \_\_\_\_\_ (Contract dated, \_\_\_\_\_, by and between the Government and \_\_\_\_\_ (Contractor), the undersigned, \_\_\_\_\_ (Guarantor), a corporation incorporated in the State of \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and (c) Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder. Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this



Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on \_\_\_\_\_

NAME OF CORPORATION  
NAME AND POSITION OF OFFICIAL  
EXECUTING PERFORMANCE  
GUARANTEE AGREEMENT ON BEHALF OF GUARANTOR  
ATTESTATION INCLUDING APPLICATION  
OF SEAL BY AN OFFICIAL OF  
GUARANTOR AUTHORIZED TO AFFIX  
CORPORATE SEAL

**L.42 EXHIBIT B COST EXHIBITS**

The cost exhibits are provided in a separate file attachment entitled “**DE-SOL-0005388-Cost-Exhibits.xls.**”

**L.43 EXHIBIT C PAST PERFORMANCE QUESTIONNAIRE COVER LETTER**

The Department of Energy is seeking your assistance on a very important procurement.

[insert name of Offeror or Major or Critical Subcontractor] is participating in a proposal for a DOE contract. [insert name of Offeror or Major or Critical Subcontractor] has identified you as someone who is familiar with their past performance on similar work. We are asking you to complete the attached Past Performance Information Questionnaire to help DOE evaluate [insert name of Offeror or Major or Critical Subcontractor]'s past performance.

We greatly appreciate your time and assistance in completing this questionnaire. In accordance with Part 15.506 of the Federal Acquisition Regulation, the names of individuals providing reference information about past performance will not be disclosed.

Please return the completed questionnaire by July 15, 2014 to:

US Department of Energy  
National Energy Technology Laboratory  
626 Cochrans Mill Road  
PO Box 10940  
Pittsburgh, PA 15236-0940  
Attn: Raelynn Honkus, Contract Specialist, MS-921-107 or via e-mail at [Raelynn.Honkus@netl.doe.gov](mailto:Raelynn.Honkus@netl.doe.gov).

If submitting electronically, the Past Performance Questionnaire shall be submitted in .pdf form.

**L.44 EXHIBIT D PAST PERFORMANCE INFORMATION QUESTIONNAIRE**

<b>Past Performance Information Questionnaire for: <u>[Insert Name of Offeror or Major or Critical Subcontractor]</u></b>	
<b>Respondent: Please fill in the following table:</b>	
1. Complete Name and Title of Responder	
2. Company or Agency Name, Address, Telephone Number, Facsimile Number (w/Area Code), and E-mail Address	
3. Contract Name or Title, Contract Number and Type of Contract	
4. Signature	

<b>4 = Outstanding</b>	Performance was substantially and consistently above contract requirements. Contractor displayed an overall superior understanding of contract requirements, and used innovative approaches leading to enhanced performance.
<b>3 = Good</b>	Performance was above minimum contract requirements. Contractor displayed a thorough understanding of contract requirements.
<b>2 = Satisfactory</b>	Performance met minimum contract requirements.
<b>1 = Marginal</b>	Performance was below minimum contract requirements. Contractor displayed a lack of thorough understanding of contract requirements in one or more significant performance areas.
<b>0 = Unsatisfactory</b>	Performance completely failed to meet the minimum contract requirements. Contractor displayed a total lack of understanding of contract requirements.
<b>NA = Not Applicable</b>	
<b>DK = Don't Know</b>	No knowledge available to respond to this question.

For any rating(s) less than 2, please attach an explanatory narrative. We greatly appreciate your time and assistance in completing this questionnaire.

[Page 1 of 3]

**Past Performance Information Questionnaire for: [Insert Name of Offeror or Major or Critical Subcontractor]\_\_\_\_\_**

<p>1. How would you rate the contractor's performance in the following areas: Meeting contract milestones? Submitting deliverables timely? Adherence to contract schedules?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK] [4] [3] [2] [1] [0] [NA] [DK] [4] [3] [2] [1] [0] [NA] [DK]</p>
<p>2. How would you rate the contractor's ability to perform within the contract ceiling or estimated cost?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>3. Did the contractor utilize cost efficiencies in performance of your contract?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>4. How would you rate the contractor's cost performance?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>5. Did the contractor submit accurate and timely invoices?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>6. If proposals were generated for changes, requests for equitable adjustment, or claims, how would you rate the reasonableness of the pricing?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>7. How would you rate the contractor's key personnel performance?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>8. How would you rate the contractor's ability to recruit and retain well-qualified key personnel?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>9. Did the contractor utilize an effective project management system that included planning, budgeting, status tracking, reporting, baseline management, critical path analysis, and work breakdown structure?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>10. Has there been a positive or negative trend in contract performance ("0" would be a very negative trend, "4" would be a very positive trend)</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>11. How would you rate the contractor's ability to create teaming/partnering relationships to achieve project goals?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>12. How would you rate the contractor's ability to integrate activities with other contractors on multiple contractor sites?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>13. Was the Performance Work Statement executed effectively by the contractor in a responsive manner?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>14. How would you rate the contractor's responsiveness to technical direction?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>
<p>15. Was the contractor's Environment Safety &amp; Health (ES&amp;H) program in compliance with contract requirements and protective of workers, public, and the environment?</p>	<p>[4] [3] [2] [1] [0] [NA] [DK]</p>

<b>Past Performance Information Questionnaire for: <u>[Insert Name of Offeror or Major or Critical Subcontractor]</u></b> _____	

16. Was the contractor effective in subcontract management and did it meet subcontracting goals?	<u>[4] [3] [2] [1] [0] [NA] [DK]</u>
17. Did the contractor provide an effective and efficient transition from the previous contractor?	<u>[4] [3] [2] [1] [0] [NA] [DK]</u>
18. Did the contractor effectively manage regulatory compliance programs and regulatory interfaces?	<u>[4] [3] [2] [1] [0] [NA] [DK]</u>
19. Did the contractor's corporate office effectively support your contract?	<u>[4] [3] [2] [1] [0] [NA] [DK]</u>
20. Did the contractor develop and implement an effective quality assurance program?	<u>[4] [3] [2] [1] [0] [NA] [DK]</u>
21. Did the contractor effectively implement human resources requirements and manage labor relations?	<u>[4] [3] [2] [1] [0] [NA] [DK]</u>
22. Did the contractor manage effectively including cooperation with the technical representatives, the Contracting Officer, and other stakeholders showing flexibility and responsiveness?	<u>[4] [3] [2] [1] [0] [NA] [DK]</u>
23. Was the contractor effective in working with organized labor, , media, and other stakeholders?	<u>[4] [3] [2] [1] [0] [NA] [DK]</u>
24. Provide an overall assessment of the contractor's performance.	<u>[4] [3] [2] [1] [0]</u>
25. Would you hire this Company again?	<u>[ ] Yes [ ] No</u>

Please Provide Any Additional Comments Below	

**L.45 EXHIBIT E PAST PERFORMANCE REFERENCE INFORMATION FORM**

1. Complete name of Government agency, commercial firm, or other organization	
2. Complete address	
3. Contract number or other reference and type	4. Date of contract
5. Date work commenced	6. Date work was completed or scheduled to be completed
7. Contract Type and Contract Value	8. Final amount invoiced or amount invoiced to date
9a. Technical point of contact (name, title, company/agency, address, telephone number, fax number, and e-mail address)	9b. Contracting point of contact (name, title, company/agency, address, telephone number, fax number, and e-mail address)
9c. Environmental Regulator point of contact (name, title, company/agency, address, telephone number, fax number, and e-mail address)	10. Consultants and partners/subcontractors used (names, addresses, and phone numbers)
11. Project/Contract Title	
12. Description of contract work (Describe nature and scope)	
<p>13. Current Status of Contract (choose one)</p> <p><input type="checkbox"/> Work Continuing, On Schedule</p> <p><input type="checkbox"/> Work Continuing, Behind Schedule</p> <p><input type="checkbox"/> Work Completed, No further Action Pending or Underway</p> <p><input type="checkbox"/> Work Completed, Routine Administrative Action Pending or Underway</p> <p><input type="checkbox"/> Work Completed, Litigation Pending or Underway</p> <p><input type="checkbox"/> Terminated for Convenience</p> <p><input type="checkbox"/> Terminated for Default</p> <p><input type="checkbox"/> Other (explain):</p> <p>Attach additional sheet if necessary (one additional sheet maximum)</p>	

Instructions for Completing the Reference Information Worksheet

- Item 1. Insert the complete name and address of the customer, including parent organization, if any. Do not use acronyms.
- Item 2. Insert the customer's complete address, including both post office box and street address, if applicable.
- Item 3. Insert any contract number or other contract reference used by the customer and contract type.
- Item 4. Insert the date on which the contract came into existence.
- Item 5. Insert the date on which you started to perform the work.
- Item 6. Insert the date on which the customer agreed that the work was satisfactorily completed (including substantial completion), aside from any pending or on-going administrative actions, claims negotiations, or litigation.
- Item 7. Insert the contract type and contract value (separately listing fee if cost-type).
- Item 8. Insert the final sum of all invoices, or the sum of all invoices to date, including agreed upon and disputed amounts, paid and awaiting payment.
- Item 9a. Insert the name, title, company/agency, address, telephone number, facsimile number, and e-mail address (if available) of the program or project manager, quality assurance representative, or other customer technical representative who is most familiar with the quality of your work under the contract.
- Item 9b. Insert the name, title, company/agency, address, telephone number, facsimile number, and e-mail address (if available) of the contracting officer, purchasing agent, or other customer contracting or purchasing representative who is most familiar with your work under the contract.
- Item 9c. Insert the name, title, company/agency, address, telephone number, facsimile number, and e-mail address (if available) of (a) lead environmental regulator(s) or a State regulatory office director under whose authority environmental regulations would be enforced.
- Item 10. Insert names and phone numbers of consultants and partners/subcontractors used.
- Item 11. Insert the title of the project and/or contract.
- Item 12. Describe the nature and scope of the work. Describe the relevance of the work to the current acquisition and discuss performance. The objective is to show how the work that you did or are doing is similar in nature and scope to the work that is to be performed under the contract contemplated by the request for proposals. Describe any unusual circumstances of performance or problems that may be relevant to the work that is to be performed. Tell your side of the story of any conflicts with the customer concerning which they may make adverse remarks about your performance. Describe any actions that you have taken or plan to take to correct any shortcomings in your performance.
- Item 13. Check the box which most accurately describes the current contract status.



**L.46 EXHIBIT F ENVIRONMENT, SAFETY, HEALTH, AND QUALITY (ESH&Q) PAST PERFORMANCE INFORMATION FORM (to be completed by Offeror and all major or critical subcontractor(s) only)**

The Offeror and all major or critical subcontractor(s) shall provide a complete response to the following Environment, Safety, Health and Quality (ESH&Q) Information for their company, assessing their business experience as a whole. If an indicator is not applicable, enter “N/A” and provide an explanation on why the requested information does not apply. If an indicator is zero, enter “0”. Where events are referenced under more than one ESH&Q Past Performance Indicator, provide a sequential letter identifier each time the same event is reported below. The term “subcontractor” applies to any level of subcontract employee working under the cognizance of the Offeror team member.

**Offeror and all major or critical subcontractor(s) shall complete the following form. For any significant findings, please use the narrative reference block to provide any additional information related to the problem(s) noted.**

ESH&Q Past Performance Information Form for: <u>[Insert Company Name]</u>  [Insert complete name and title of responder]	Events and Explanation					
	YTD 2014	2013	2012	2011	2010	Narrative Reference
ESH&Q Past Performance Indicator						
<b>Environmental Indicators</b>						
E.1 Number and types of federal, state, and local environmental permits managed.						
E2. Number of Environmental Protection Agency or state equivalent agency enforcement actions, amount of fine, penalty, and/or settlement conditions for each, and enforcement authority that took action.						
E3. Number of releases of a hazardous substance or regulated pollutant that exceeded CERCLA reportable quantities specified in 40 CFR Part 302 and 40 CFR Part 355.						
E4. Number of releases above any other federal, state, and local environmental permit requirements not reported under E2 and E3.						
E5. Number of times that you and your subcontractors have achieved ISO 9001, 14001, and 18001 Qualification and Certification, (for each instance provide location, summary of contract scope performed, and date of achievement in narrative block).						

ESH&Q Past Performance Information Form for: [Insert Company Name]		Events and Explanation				
[Insert complete name and title of responder]	YTD 2014	2013	2012	2011	2010	Narrative Reference
ESH&Q Past Performance Indicator						
<b>Safety and Health Indicators</b>						
S1. Number of Occupational Safety and Health Administration (OSHA) or state equivalent agency enforcement actions, date, amount of fine, penalty, and/or settlement conditions for each, and enforcement authority that took action.						
S2. Number of nuclear safety Price Anderson Act Amendments (PAAA) warning letters and/or enforcement actions, amount of fine, penalty, and/or settlement conditions for each.						
S3. Number of other federal agency actions not reported in S1 and S2 that are related to safety and health, date, amount of fine, penalty, and/or settlement conditions for each, and enforcement authority that took action.						
S4. Number of times a Conditional Payment of Fee (under DEAR 970.5215-3) was invoked, date, amount, mitigating factors (if any), and DOE office that took action.						
S5. Case rate for Days Away, Restricted, or Transferred (DART) cases per 200,000 hours worked and identify the total number of hours worked.						
S6. Days rate for Days Away, Restricted, or Transferred (DART) cases per 200,000 hours worked and identify the total number of hours worked.						
S7. Case rate for Total Recordable Case (TRC) per 200,000 hours worked and identify the total number of hours worked.						
S8. Number of workplace fatalities (date of fatality and cause of fatality based on accident investigation results).						

<b>ESH&amp;Q Past Performance Information Form for: [Insert Company Name]</b>  <b>[Insert complete name and title of responder]</b>  <b>ESH&amp;Q Past Performance Indicator</b>	<b>Events and Explanation</b>					
	<b>YTD 2014</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>Narrative Reference</b>
S9. Case rate for Days Away From Work cases per 200,000 hours worked and identify the total number of hours worked.						
S10. Experience Modification Rate (EMR) – workers’ compensation loss experience rate.						
S11. Total number of Workers’ Compensation claims filed by you and your subcontractors employees.						
S12. Fire loss rate (dollars per year)						
S13. Average annual worker radiation effective dose rate.						
S14. Number of events reported into the DOE Occurrence Reporting Processing System (ORPS). List the Report No., Reporting Criteria, and Significance Category for each event.						
S15. Number of times you or your subcontractors achieved recognition for safety program performance through the Voluntary Protection Program (OSHA or DOE); (for each instance provide location, summary of contract scope performed, and date of achievement in narrative block).						
<b>Quality Indicators</b>						
Q1. Number of quality awards received from customers; summary of citation, location, and date(s) of award.						
Q2. Number of national and international quality awards received or as a finalist; summary of citation, location, and date(s) of award/award ceremony.						
Q3. Percentage of quality assurance corrective actions tracked at corporate level completed on time. Include summary of corrective action(s), and date(s).						

<b>ESH&amp;Q Past Performance Information Form for: [Insert Company Name]</b>  <b>[Insert complete name and title of responder]</b>  <b>ESH&amp;Q Past Performance Indicator</b>	<b>Events and Explanation</b>					
	<b>YTD 2014</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>Narrative Reference</b>
Q4. Number of nonconformance reporting or other inspection systems resulting in corrective or improvement actions taken. Include summary of corrective action(s), and date(s).						

### **Section M - Evaluation Factors for Award**

#### **M.1 52.217-5 EVALUTION OF OPTIONS (JUL 1990)**

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

#### **M.2 PROPOSAL EVALUATION - GENERAL**

The Offeror selected for award will be the responsible Offeror whose proposal is determined to be the best overall value to the Government based on the evaluation criteria set forth in this section. Only proposals offering the full range of services in the Performance Work Statement and all items identified in Part I, Section B for the base period and for all identified option periods are eligible for award.

#### **M.3 COMPLIANCE WITH THE REQUEST FOR PROPOSAL**

Volume I, Offer and Other Documents will not be point scored or adjectively rated. The proposal preparation instructions contained in Section L are designed to provide guidance to Offerors concerning the type and depth of information the Government considers necessary to conduct an informed evaluation of each proposal.

The Offeror's compliance with the proposal instructions as outlined in Volume I, Offer and Other Documents (such as format and content) will be reviewed and serve as the basis for a determination of responsiveness to the requirements contained in this solicitation. If applicable, an Offeror's Corporate Governance and/or Performance Guarantee Agreement will be reviewed in support of a contractor responsibility determination.

If the proposal fails to comply with material RFP requirements or to meaningfully address major portions of the RFP as to be grossly and obviously deficient, it may be eliminated from further consideration before a detailed evaluation is performed. Deviations/exceptions taken to this solicitation will not necessarily cause a proposal to be considered unacceptable. However, a large number of deviations/exceptions or one or more significant deviation may result in the rejection of the proposal as unacceptable. In the event a proposal is rejected, a notice will be sent to the Offeror stating the reason(s) that the proposal will not be considered for further evaluation.

#### **M.4 BASIS FOR CONTRACT AWARD**

The Government intends to award one contract to the Offeror whose proposal is both responsive to the solicitation and determined to be the best value to the Government; however, as stated in *Part IV, Section L, Number of Awards*, the Government reserves the right to make any number of awards, or no award, if such a decision is considered to be in the Government's best interest to do so.

Selection of the best value to the Government will be achieved through a process of evaluating the strengths and weaknesses of each Offeror's proposal in accordance with the Evaluation Criteria set forth in this section (Section M). In determining the best value to the Government, the Technical Proposal Criteria are significantly more important than the Total Evaluated Price, i.e., the sum of the most probable cost plus the proposed maximum award fee for all CLINs for the base and option periods. However, the Government will not make an award at a cost premium it considers disproportionate to the benefits associated with the evaluated superiority of a given technical proposal. Thus, to the extent that Offerors' Technical Proposals are evaluated as technically equivalent (equal or so close to be considered equal in merit), the Total Evaluated Price is more likely to be a determining factor.

#### **M.5 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA**

Volume II, *Technical Proposal*, will be adjectively rated. The relative importance of the Technical Proposal Criteria is as follows: Criterion 1 is the most important criterion with Criterion 2 being the next most important. Criterion 3 is more important than Criterion 4. Criterion 2 is of equal importance to the combined Criterion 3 and Criterion 4. The individual elements that comprise Criteria 1, 2, 3, and 4 are not listed in order of importance and will not be individually weighted, but rather will be considered as a whole in developing an overall rating for each criterion.

**M.6 EVALUATION CRITERIA – TECHNICAL PROPOSAL****TECHNICAL CRITERION 1: MANAGEMENT, ORGANIZATION, AND STAFFING PLAN**

The Government will evaluate the Offeror's proposed management, organization and staffing approach to effectively and efficiently manage, administer, and implement the contract as a whole, including, but not limited to, technical, administrative, business, quality, and safety functions required for executing the work defined in the PWS.

The Government will evaluate the reasonableness, merit, and completeness of the Offeror's proposed management structure and approach to administering and implementing all elements of the contract, including the demonstrated soundness of the management team's ability to identify and address the critical elements of managing a complex and diverse set of work requirements that are performed at multiple locations while adhering to detailed and accurate financial and contract reporting requirements. The Government will also evaluate the Offeror's access to and demonstrated knowledge of the data, tools, and systems necessary to administer the contract and to perform the work.

The Government will evaluate the breadth and effectiveness of the Offeror's subcontracting and/or teaming approach for implementing the requirements of the PWS as well as administering the contract, and the extent to which the Offeror's organizational approach provides an effective and efficient means for performing the work and administering the contract.

The Offeror's staffing plan will be evaluated in terms of it being effective from a strategic and an operational context for providing the resources necessary to perform the work described in the PWS, the expertise proposed, the extent to which it aligns with the varied resources required of the PWS, and the degree it provides for a flexible and adaptive workforce.

Key Personnel will be evaluated for demonstrated leadership and the extent of their experience in performing relevant work including overall outcomes, the applicability and extent of their qualifications (e.g., education, experience, skill set, licenses, professional development) to effectively conduct the work as described in the PWS, their availability and degree of commitment, and the appropriateness of their proposed compensation.

The Government may contact references and previous employers to verify the accuracy of resume information and further assess the leadership, experience, and qualifications of Key Personnel, and may consider information obtained from any source in its evaluation of the Offeror's proposed Key Personnel.

**CRITERION 2: TECHNICAL APPROACH**

The Government will evaluate the Offeror's proposed technical approach to effectively and efficiently perform the work described in the PWS, including its demonstrated understanding of requirements; the merit of the Offeror's approach to receiving, assigning, performing, and reporting required work, including teaming or subcontracting, as applicable; the Offeror's proposed use of the data, tools, and systems necessary to perform the required work and the Offeror's proposed Quality Assurance/Quality Control approach.

**TECHNICAL CRITERION 3: RELEVANT EXPERIENCE**

The Government will evaluate the Offeror's relevant experience to determine the degree to which it demonstrates the likelihood it can successfully perform according to the requirements of the PWS. The Government will similarly evaluate the relevant experience of major or critical subcontractor(s) proposed by the Offeror. In the case of a joint venture, Limited Liability Company, or other teaming arrangement formed for the purpose of competing for this contract, the Government will evaluate the relevant experience of the entities that comprise the newly formed entity.

Relevant experience includes current or past contracts similar in size, scope, and complexity, (all three must be similar in order to be considered relevant) to that of the work described in the Performance Work Statement. More recent experience will be weighted more heavily than earlier relevant experience.

**TECHNICAL CRITERION 4: RELEVANT PAST PERFORMANCE**

The Government will evaluate the Offeror's past performance to determine the degree to which it demonstrates the likelihood it can successfully perform the requirements of the PWS. The Government will similarly evaluate the relevant past performance of major or critical subcontractor(s) proposed by the Offeror. In the case of a joint venture, Limited Liability Company, or other teaming arrangement formed for the purpose of competing for this contract, the Government will evaluate the relevant past performance of the entities that comprise the newly formed entity.

Relevant past performance includes current or past contracts similar in size, scope, and complexity (all three must be similar in order to be considered relevant) to that of the work described in the Performance Work Statement. The Government will use information furnished by the Offeror and reference(s), and other information obtained from other sources in evaluating relevant past performance.

For Offerors without a record of relevant past performance or for whom relevant past performance information is not available, the Offeror will not be evaluated favorably or unfavorably.

**M.7 EVALUATION CRITERIA - COST**

Volume III, *Cost Proposal* will neither be point-scored, nor adjectively rated, but will be evaluated to determine reasonableness and cost realism, and completeness. For evaluation purposes, the Total Evaluated Price will be the sum of the most probable cost plus the proposed maximum award fee for all CLINs for the base and option periods. The Government will evaluate each Offeror's cost proposal, using one or more of the techniques defined in FAR 15.404. The evaluation of cost realism includes an analysis of specific elements of each Offeror's proposed cost to determine whether the proposed estimated cost elements are sufficient for the work to be performed; reflect a clear understanding of requirements; and are consistent with the methods of performance and materials described in the Offeror's technical proposal.

For evaluation purposes, the Government will compute the most probable cost associated with the Offeror's proposal. The most probable cost will be determined based on the Offeror's proposal for any upward or downward adjustments required from the cost realism evaluation.