

2. CONTRACT (Prco. Inst. Ident.) NO. DE-FE0003467	3. EFFECTIVE DATE 02/01/2011	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. See Schedule
--	---------------------------------	---

5. ISSUED BY	CODE	02605	8. ADMINISTERED BY (if other than Item 5)	CODE	02605
--------------	------	-------	---	------	-------

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

7. NAME AND ADDRESS OF CONTRACTOR (No., Street, City, Country, State and ZIP Code) AHTNA FACILITY SERVICES, INCORPORATED Attn: DONNA FREITAS 3680 INDUSTRIAL BLVD. 600H W SACRAMENTO CA 956916504	8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)
	9. DISCOUNT FOR PROMPT PAYMENT NET 30
	10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN ITEM 12

CODE 962685017	FACILITY CODE
----------------	---------------

11. SHIP TO/MARK FOR	CODE	02605	12. PAYMENT WILL BE MADE BY	CODE	00509
U.S. DOE/NETL Morgantown Campus 3610 Collins Ferry Road PO Box 880 Morgantown WV 26507-0880	OR for NETL (Morgantown) U.S. Department of Energy Oak Ridge Financial Service Center P.O. Box 4787 Oak Ridge TN 37831				

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) () <input checked="" type="checkbox"/> 41 U.S.C. 253 (c) (5)	14. ACCOUNTING AND APPROPRIATION DATA See Schedule
--	---

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

15G. TOTAL AMOUNT OF CONTRACT \$4,373,100.00

16. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	SOLICITATION/CONTRACT FORM	1	X	I	CONTRACT CLAUSES	30
X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	7	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
X	C	DESCRIPTION/SPECS./WORK STATEMENT	9	X	J	LIST OF ATTACHMENTS	132
X	D	PACKAGING AND MARKING	10	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	INSPECTION AND ACCEPTANCE	11		K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
X	F	DELIVERIES OR PERFORMANCE	12		L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
X	G	CONTRACT ADMINISTRATION DATA	13		M	EVALUATION FACTORS FOR AWARD	
X	H	SPECIAL CONTRACT REQUIREMENTS	16				

17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number <u>DE-SOL-0002162</u> including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any condition sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
---	--

19A. NAME AND TITLE OF SIGNER (Type or print) Donna Freitas, Chief Operating Officer	20A. NAME OF CONTRACTING OFFICER Joseph S. Saunders		
19B. NAME OF CONTRACTOR Ahtna Facility Services, Inc.	19C. DATE SIGNED 12/23/2010	20B. UNITED STATES OF AMERICA BY _____ (Signature of the Contracting Officer)	20C. DATE SIGNED

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
DE-FE0003467

PAGE OF
2 132

NAME OF OFFEROR OR CONTRACTOR
AHTNA FACILITY SERVICES, INCORPORATED

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	DUNS Number: 962685017 Professional Security Guard Services required per the attached statement of work. SBA Requirement Number is 1084/10/007536/01 FOB: Destination Period of Performance: 02/01/2011 to 01/31/2013				

TABLE OF CONTENTS

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS 7

 B.1 SERVICES BEING ACQUIRED (BASE CONTRACT WITH OPTIONS)..... 7

 B.2 FIXED PRICE OF CONTRACT 7

 B.3 LIMITATION OF GOVERNMENT’S OBLIGATION 7

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT 9

 C.1 STATEMENT OF WORK..... 9

 C.2 REPORTS 9

SECTION D - PACKAGING AND MARKING 10

 D.1 PACKAGING 10

 D.2 MARKING 10

SECTION E - INSPECTION AND ACCEPTANCE 11

 E.1 INSPECTION 11

 E.2 ACCEPTANCE 11

 E.3 52.246-4 INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996)..... 11

SECTION F - DELIVERIES OR PERFORMANCE..... 12

 F.1 PERIOD OF PERFORMANCE (BASE CONTRACT WITH OPTION(S))..... 12

 F.2 PRINCIPAL PLACE OF PERFORMANCE 12

 F.3 52.242-15 STOP-WORK ORDER (AUG 1989). 12

SECTION G - CONTRACT ADMINISTRATION DATA 13

 G.1 CORRESPONDENCE PROCEDURES 13

 G.2 SUBMISSION OF VOUCHERS/INVOICES – Fixed Price 13

 G.3 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR 15

 G.4 OBSERVANCE OF LEGAL HOLIDAYS..... 15

SECTION H - SPECIAL CONTRACT REQUIREMENTS..... 16

 H.1 CONSECUTIVE NUMBERING 16

 H.2 TECHNICAL DIRECTION..... 16

 H.3 MODIFICATION AUTHORITY 17

 H.4 GOVERNMENT PROPERTY AND DATA..... 17

 H.5 MOVEMENT OF GOVERNMENT PROPERTY ON AND OFF-SITE -- NETL 18

 H.6 SECURITY AND PERSONNEL REQUIREMENTS 18

 H.7 GOVERNMENT PROVIDED SERVICES..... 19

 H.8 USE OF GOVERNMENT-OWNED EQUIPMENT/FACILITIES..... 20

 H.9 CONSERVATION OF UTILITIES..... 20

 H.10 IDENTIFICATION BADGES - NETL 21

 H.11 MINIMUM WAGE DETERMINATION AND FRINGE BENEFITS 21

 H.12 INSURANCE -- MINIMUM REQUIREMENTS 21

 H.13 KEY PERSONNEL/PROGRAM MANAGER..... 21

 H.14 TRAVEL AND PER DIEM COSTS 22

 H.15 CONFIDENTIALITY OF INFORMATION..... 22

H.16	CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES	23
H.17	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR	23
H.18	SECTION 8(A) DIRECT AWARDS (DEVIATION)	23
H.19	COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL REQUIREMENTS.....	23
H.20	CONTRACTOR COMMUNICATION RELEASES	23
H.21	PERMITS AND LICENSES.....	24
H.22	COMMUNITY COMMITMENT.....	24
H.23	ENVIRONMENTAL, SAFETY, AND HEALTH MANAGEMENT SYSTEM POLICY AND ENVIRONMENTAL ASPECT AND OBJECTIVE/TARGET CONSIDERATIONS PROCEDURES.....	24
H.24	ENVIRONMENT, SAFETY, AND HEALTH -- ON-SITE SERVICE CONTRACTS.....	24
H.25	SAFETY & HEALTH AND ENVIRONMENTAL PROTECTION.....	26
H.26	INDEMNITY -- ENVIRONMENTAL, HEALTH AND SAFETY VIOLATIONS.....	26
H.27	HAZARDOUS WASTES MANIFESTS AND LABELS	26
H.28	LOBBYING RESTRICTION	26
H.29	OVERTIME APPROVALS.....	27
H.30	PAYMENT OF OVERTIME.....	27
H.31	PRIOR APPROVAL REQUIREMENTS FOR PLACEMENT OF SUBCONTRACTS AND/OR CONSULTANTS.....	27
H.32	ACCESS TO DOE-OWNED OR LEASED FACILITIES.....	27
H.33	COMPLIANCE WITH INTERNET VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY	28
H.34	GREEN PURCHASING UNDER DOE SERVICE CONTRACTS	29
SECTION I - CONTRACT CLAUSES		30
I.1	52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998).....	30
I.2	52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES. (APR 1984).....	30
I.3	52.202-1 DEFINITIONS. (JUL 2004)	30
I.4	952.202-1 DEFINITIONS.....	30
I.5	52.203-3 GRATUITIES. (APR 1984).....	31
I.6	52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984).....	31
I.7	52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006).....	32
I.8	52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995).....	32
I.9	52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997).....	33
I.10	52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997).....	34
I.11	52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (JUN 2007)	35
I.12	52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS and CONDUCT (APR 2010).....	38
I.13	952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (DEC 2000).....	42
I.14	952.204-2 SECURITY. (MAY 2009).....	42
I.15	52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER. (AUG 2000)	45
I.16	52.204-7 CENTRAL CONTRACTOR REGISTRATION. (OCT 2008).....	46
I.17	52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007)	48
I.18	952.204-70 CLASSIFICATION/DECLASSIFICATION. (SEP 1997).....	48
I.19	952.204-73 FACILITY CLEARANCE. (MAY 2002).....	49
I.20	952.204-76 CONDITIONAL PAYMENT OF FEE OR PROFIT--SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION. (JAN 2004).....	52
I.21	952.208-70 PRINTING. (APR 1984)	54
I.22	52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (SEP 2006)	55
I.23	52.215-2 AUDIT AND RECORDS - NEGOTIATION. (JUN 1999).....	55
I.24	52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT. (OCT 1997)	57
I.25	52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA. (OCT 1997).....	57

I.26	52.215-12 SUBCONTRACTOR COST OR PRICING DATA. (OCT 1997).....	58
I.27	52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004).....	59
I.28	52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY. (OCT 1997).....	59
I.29	52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005).....	59
I.30	52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997).....	60
I.31	52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) – ALTERNATE III (OCT 1997).....	60
I.32	52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA – MODIFICATIONS ALTERNATE III (OCT 1997).....	61
I.33	52.217-8 OPTION TO EXTEND SERVICES. (NOV 1999).....	62
I.35	52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. (MAY 2004).....	63
I.36	52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996).....	64
I.37	52.219-70XX SECTION 8(A) DIRECT AWARDS (JUNE 1998) (DEVIATION).....	64
I.38	52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997).....	65
I.39	52.222-3 CONVICT LABOR. (JUN 2003).....	65
I.40	52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005).....	65
I.41	52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (FEB 1999).....	66
I.42	52.222-26 EQUAL OPPORTUNITY. (MAR 2007).....	67
I.43	52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (SEP 2006).....	68
I.44	52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES. (JUN 1998).....	71
I.45	52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (SEP 2006).....	73
I.46	52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED. (NOV 2007).....	73
I.47	52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989).....	79
I.48	52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS). (SEP 2009).....	79
I.49	52.222-50 COMBATING TRAFFICKING IN PERSONS. (FEB 2009).....	80
I.50	52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009).....	82
I.51	52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003).....	84
I.52	52.223-6 DRUG-FREE WORKPLACE. (MAY 2001).....	85
I.53	52.223-10 WASTE REDUCTION PROGRAM. (AUG 2000).....	86
I.54	52.223-14 TOXIC CHEMICAL RELEASE REPORTING. (AUG 2003).....	87
I.55	52.224-1 PRIVACY ACT NOTIFICATION. (APR 1984).....	88
I.56	52.224-2 PRIVACY ACT (APR 1984).....	88
I.57	52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008).....	89
I.58	95.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE. (JUN 1997).....	89
I.59	52.227-1 AUTHORIZATION AND CONSENT. (DEC 2007).....	89
I.60	970.5227-1 RIGHTS IN DATA FACILITIES (DEC 2000).....	90
I.61	52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007).....	94
I.62	52.227-14 RIGHTS IN DATA – GENERAL (DEC 2007).....	94
I.63	52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION. (JAN 1997).....	98
I.64	52.229-3 FEDERAL, STATE, AND LOCAL TAXES. (APR 2003).....	99
I.65	52.232-1 PAYMENTS. (APR 1984).....	100
I.66	52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (FEB 2002).....	100
I.67	52.232-11 EXTRAS. (APR 1984).....	100
I.68	52.232-17 INTEREST (OCT 2008).....	100
I.69	52.232-18 AVAILABILITY OF FUNDS (APR 1984).....	101
I.70	52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984).....	101
I.71	52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986).....	101
I.72	52.232-25 PROMPT PAYMENT. (OCT 2008).....	102
I.73	52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION. (OCT 2003).....	106

I.74	52.233-1 DISPUTES. (JUL 2002) - ALTERNATE I (DEC 1991).....	107
I.75	52.233-3 PROTEST AFTER AWARD. (AUG 1996)	109
I.76	52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004).....	109
I.77	52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION. (APR 1984).....	109
I.78	52.237-3 CONTINUITY OF SERVICES. (JAN 1991)	110
I.79	52.242-13 BANKRUPTCY. (JUL 1995).....	110
I.80	52.242-17 GOVERNMENT DELAY OF WORK (APR 1984).....	110
I.81	52.243-1 CHANGES - FIXED-PRICE. (AUG 1987) - ALTERNATE II (APR 1984)	111
I.82	52.244-2 SUBCONTRACTS (JUNE 2007).....	111
I.83	52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996).....	113
I.84	52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2010).....	113
I.85	52.245-1 GOVERNMENT PROPERTY (AUG 2010).....	114
I.86	52.246-25 LIMITATION OF LIABILITY - SERVICES. (FEB 1997)	125
I.87	52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE). (MAY 2004).....	126
I.88	52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE). (APR 1984).....	129
I.89	52.253-1 COMPUTER GENERATED FORMS. (JAN 1991).....	130
SECTION J - LIST OF ATTACHMENTS		131
J.1	LIST OF ATTACHMENTS (MAR 1999).....	131

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 SERVICES BEING ACQUIRED (BASE CONTRACT WITH OPTIONS)

Items 1 through 3 are the Firm-Fixed-Prices for services at the SECON Levels 3, 4, and 5 at the three (3) National Energy Technology Laboratory locations in Albany, Oregon, Morgantown, West Virginia, and Pittsburgh, Pennsylvania. These levels are specified in Part III, Section J, Attachment A, Statement of Work (SOW), Part 6. Reports as prescribed in accordance with Part III, Section J, Attachment B, "Reporting Requirements Checklist" are not separately priced and are included in the Firm-Fixed-Price.

Item 4 is for services beyond the core requirements identified in the SOW, Part 6 on an as needed basis. These services may include, but are not limited to, emergency situations, SECON Levels 1 and 2, unforeseen training, locksmith services, special events, etc. These services shall only occur with prior written approval of the Contracting Officer's Representative (COR). Item 4 services shall be billed at the Fixed-Rate set forth in the contract per labor category. The Not-To-Exceed amount for this category may be unilaterally adjusted by the Contracting Officer (CO) as may be required.

Base Period (February 1, 2011 through January 31, 2013)

ITEM DESCRIPTION	UNITS	PRICE PER MONTH	TOTAL PRICE
Item 1 – SECON Level 3, 4, and 5 Site Security services at the National Energy Technology Laboratory located in Morgantown, WV	24 Months		
Item 2 – SECON Level 3, 4, and 5 Site Security services at the National Energy Technology Laboratory located in Pittsburgh, PA	24 Months		
Item 3 – SECON Level 3, 4, and 5 Site Security services at the National Energy Technology Laboratory located in Albany, Oregon	24 Months		
Item 4 – Additional Site Security services may be required by the National Energy Technology Laboratory. These services shall be billed at an hourly rate of \$33.36.	1 Lot		Not-To-Exceed
TOTAL BASE PERIOD PRICE			\$4,373,100.00

B.2 FIXED PRICE OF CONTRACT

The fixed price of this contract is \$4,373,100.

B.3 LIMITATION OF GOVERNMENT'S OBLIGATION

- (a) Contract line item(s) 1 through 4 are incrementally funded. For these item(s), the sum of \$ 200,000 of the total price is presently available for payment and allotted to this contract.
- (b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).
- (c) The Contractor will notify the Contracting Officer in writing at least thirty (30) days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination of convenience, will approximate seventy-five (75) percent of

the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue timely performance of applicable line items. If after such notification, additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "termination for Convenience of the Government."

- (d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.
- (e) If, solely by reason of failure of the Government to allot additional funds in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."
- (f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.
- (g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regards to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.
- (h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for the Convenience of the Government."

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 STATEMENT OF WORK

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

C.2 REPORTS

Reports shall be prepared and submitted in accordance with the reporting requirements described in Part III -- Section J, Attachment B, 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:

- (1) Identifies the contract by number under which the item is being delivered.
- (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
- (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

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

SECTION E - INSPECTION AND ACCEPTANCE

E.1 INSPECTION

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

E.2 ACCEPTANCE

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

E.3 52.246-4 INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996)

- (a) *Definition:* "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform to contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce the contract price to reflect the reduced value of the services performed.
- (f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may -
 - (1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or
 - (2) Terminate the contract for default.

SECTION F - DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE

BASE CONTRACT

The work to be performed under the Base Contract (Reference Part I, Section B) shall commence on February 1, 2011 and shall continue through January 31, 2013.

F.2 PRINCIPAL PLACE OF PERFORMANCE – NETL

The principal places of performance under this contract shall be at the National Energy Technology Laboratories located in Morgantown, West Virginia, Pittsburgh, Pennsylvania, and the Albany Research Center located in Albany, Oregon. 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)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either -
- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

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) 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.

(d) Subject Line(s)

All correspondence shall contain a subject line commencing with the contract number, i.e., DE-FE0003467, and identifying the specific contract action requested.

G.2 SUBMISSION OF VOUCHERS/INVOICES - Fixed Price

(a) Voucher Form (SF 1034)

In requesting reimbursement, contractors shall use Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal), and F4220.50 (Statement of Cost). Electronic versions of the SF1034 and the F4220.50 can be found on the NETL website at <http://www.netl.doe.gov/business/forms.html>. The Statement of Cost shall be supported by the information contained in Paragraph (c) of this clause. Acceptable substitutes for the forms (which provide the same necessary information) may be used.

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

- (1) Name and address of contractor/vendor
- (2) Invoice date
- (3) Contract number or other authorization for delivery of property or service
- (4) Description, price and quantity of property and services actually delivered or rendered
- (5) Shipping and payment terms
- (6) Name (where practicable), title, phone number and complete mailing address of responsible official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)

- (7) Name (where practicable), title, phone number and complete mailing address of the person to be notified in the event of a defective invoice.
- (8) Other substantiating documentation or information as required by the contract.

(b) Payments

The Government shall pay the contractor upon the submission of proper invoices or vouchers, the prices stipulated for the firm fixed portion of this contract for services rendered and accepted, less any deduction provided in this contract. The monthly rate shall be computed by multiplying the appropriate loaded fixed rates prescribed in the Schedule by the number of Direct Productive Labor Hours (DPLH) performed. The rates shall include labor rate, fringe benefits, overhead, general/administration, and profit applicable to the services performed. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) in accordance with the provisions of the clause entitled "Submission of Vouchers/Invoices". The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job time cards, or other substantiation approved by the Contracting Officer.

(c) Supporting Documentation

Direct costs (e.g., labor, travel, etc.) claimed for reimbursement on the Statement of Cost (F4220.50) 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 time sheets for the site (Morgantown, Pittsburgh, Albany); supporting data for travel must include the purpose of the trip, destination of the trip, number of travelers, transportation costs, and per diem costs.

All claimed subcontractor costs must be supported by submitting the same detail as outlined herein.

(d) Submission of Voucher

Requests for reimbursements must be made electronically through Department of Energy's Oak Ridge Financial Service Center (ORFSC) VIPERS. To access and use VIPERS, you must enroll at <https://finweb.oro.doe.gov/vipers.htm>. Detailed instructions on how to enroll are provided on the web site.

(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, if required.

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

G.3 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 your business confidential cost/rate information. A special provision in this contractor's award requires the confidential treatment by all contractor employees of any and all business confidential information of other contractors and financial assistance recipients to which they have access.

G.4 OBSERVANCE OF LEGAL HOLIDAYS

(a) The on-site Government personnel observe the following holidays:

- New Year's Day
- Martin Luther King, Jr.'s Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Christmas Day

Any other day designated by Federal statute, Executive order, or the President's 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.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 CONSECUTIVE NUMBERING

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

H.2 TECHNICAL DIRECTION

- (a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
- (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
- (1) constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes";
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within the authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b) (1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract; or
 - (2) Advise the Contractor within a reasonable time that the Government will issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes - Alternate I".

H.3 MODIFICATION AUTHORITY

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

- (a) accept nonconforming work,
- (b) waive any requirement of this contract, or
- (c) modify any term or condition of this contract.

H.4 GOVERNMENT PROPERTY AND DATA

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

- (b) Acquisition Authorization Requirements

- (1) In the course of performance of this contract, the Contractor may only acquire and direct charge to this contract replacement items for those items on the "Government-Furnished Property List" and only as directed by the Contracting Officer or their designee.
- (2) The Contractor shall be required to ensure that Contractor Acquired Property is entered into the Property Administration Management System (PAMS) and indicates the Purchase Order number utilized to acquire the property. The Contractor shall also enter into PAMS any changes to the Government-Furnished Property.
- (3) The Contractor may request authorization for acquisition of additional items from the Contracting Officer. Any such request shall include an analysis of the most economical method of acquisition (e.g., lease versus purchase) and shall describe the material equity arising from any proposed lease arrangement, such as option credits.
- (4) Any changes in the acquisition authorization shall be reflected in a revision of the "Government-Furnished Property List".
- (5) Authorization to acquire does not constitute consent to the placement of a subcontract.

- (c) Government-Furnished Property and Data

- (1) Except as otherwise authorized by the Contracting Officer in writing, only that property and data specifically included in the "Government-Furnished Property List" shall be furnished.
- (2) The "Government-Furnished Property List" is considered a living document and is maintained through the Property Administration Management System (PAMS). The Contractor will designate an authorized representative who will have limited access to the PAMS for the purpose of updating the property list and acquiring property reports. The most current "Government-Furnished Property List" can be obtained through the report capability in the PAMS as property assigned to this contract.
- (3) Annually, the Contractor will complete a physical inventory of property furnished. The inventory will be reconciled with the Government and adjustments, if necessary, will be made to the PAMS.
- (4) The "Government-Furnished Property List" as maintained in the PAMS is incorporated into this contract by reference in its entirety. No hard copy of the Government-Furnished Property List will be attached to this contract.
- (5) Administration of the Government-Furnished Property and the PAMS will be the responsibility of

the Organizational Property Management Officer and/or the Government Property Administrator.

(d) Reporting Requirements

The reports required shall be submitted in accordance with 48 CFR 945 and the reporting requirements set forth in Part III, Section J, Attachment B. The reports are to include all capital equipment and sensitive items acquired or furnished under this contract, whether or not listed on the attachments referenced above.

H.5 MOVEMENT OF GOVERNMENT PROPERTY ON AND OFF-SITE -- NETL

No Government-owned property, equipment, or materials will be removed from the NETL sites 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.

Prior written permission of the Contracting Officer is required before any non government owned property, equipment, or materials are brought onto NETL sites.

H.6 SECURITY AND PERSONNEL REQUIREMENTS

GENERAL RESPONSIBILITIES

The Contractor shall be responsible for complying with the provisions of the NETL 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.

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).

ACCESS TO FACILITIES

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

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

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 DOE COR and submit a completed loss/theft report (NETL-F 4701.1-1-1) with NETL Security within 24 hours after discovery of any missing Government property.

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 DOE COR's satisfaction.

The Contractor shall report any occurrence of a lost or misplaced key to the DOE 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 DOE COR within 24 hours.

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

COMBINATION CONTROL

The Contractor shall ensure there is control of combinations for cipher locks. The Contractor shall notify the DOE 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.

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 (see Part I, Section H, "Access to DOE-Owned or Leased Facilities).

DATA SECURITY

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

Information processed and stored by these Information Resource systems shall include some information that must be safeguarded from disclosure and alteration. That information is subject to protection by the Privacy Act of 1974 or The Freedom of Information Act (5 USC, Section 522). The Contractor agrees, in the performance of this contract, to keep sensitive information in the strictest of confidence and to take reasonable measures to protect it from unauthorized modification or destruction, said information being the sole property of the Government. The Contractor 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 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.7 GOVERNMENT PROVIDED SERVICES

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

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

- (b) Mail Distribution: The Government shall provide mail pick-up and delivery of official mail.
- (c) Postage: Government-provided postage is restricted to official correspondence.
- (d) Telephone: Telephones shall be provided for Contractor-personnel to make official local and long distance calls.
- (e) Custodial Service: The Government shall provide custodial services to include emptying of trash cans and vacuuming and shampooing of carpeted areas in Government-furnished facilities.
- (f) Refuse Collection: The Government shall provide refuse collection at Government-furnished facilities.
- (g) Insect and Rodent Control: The Government shall provide insect and rodent control in Government-furnished facilities. The Contractor shall notify the DOE COR if the facilities appear to be infested.
- (h) Printing and Reproduction: Office copiers shall be provided according to Government policies for their use. The Contractor shall use NETL's Graphics and Printing facilities for the productions of documentation required in support of this SOW.
- (i) Equipment Maintenance: The Government shall maintain equipment whose maintenance is not obtained through this contract.
- (j) 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.
- (k) IT Services: The Government shall provide basic office automation tools to include an office computer connected to the NETL administrative network and loaded with an office software suite (presently MS Office); access to enterprise email and calendaring software (presently Novell GroupWise); access to enterprise applications as required; access to network file and print services; access to Internet services; office telephone and voice mail services; access to convenience copier and copy center services; access to library services; access to video teleconference and teleconference meeting resources as required; and access to helpdesk services.

H.8 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 equipment/facilities indicated in Attachment D (List of Government Property/Government Furnished). Such use is authorized on the basis that it will not interfere with the performance of the Government contract(s) for which such property was provided, and, unless otherwise stipulated, shall be in accordance with the terms and conditions thereof.

NETL currently has office spaces at the Pittsburgh, Pennsylvania, the Morgantown, West Virginia, and the Albany, Oregon site that are available for use by on-site Contractor personnel; the amount of office space available is subject to change based on current availability. Other associated Government furnished items for the on-site personnel include: office space, office furniture, local area network services, parking facilities, and other services as described in the clause entitled "Government Provided Services."

H.9 CONSERVATION OF UTILITIES

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

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

H.10 IDENTIFICATION BADGES

All personnel working at the National Energy Technology Laboratory and the Albany Research Center 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.11 MINIMUM WAGE DETERMINATION AND FRINGE BENEFITS

In the performance of this contract the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination Number CBA-2005-2729, Rev 3, dated 11/10/2008, U.S. Department of Labor Wage Determination Number CBA-2005-2730, Rev 3, dated 11/10/2008, and U.S. Department of Labor Wage Determination Number 2005-2439, Rev 10, dated 06/15/2010. Copies of these Wage Determinations are attached to this contract (see Part III, Section J).

H.12 INSURANCE – MINIMUM REQUIREMENTS

In accordance with FAR 52.228-5 (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.

H.13 KEY PERSONNEL/PROGRAM MANAGER

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

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

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

<u>Name</u>	<u>Title</u>
-------------	--------------

Stephen Christensen
Fin Johnson
Roma Vilash
Roberta Goughnour

Director of Operation
Division Manager of Security
Project Assistant
Human Resource Manager

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

H.14 TRAVEL AND PER DIEM COSTS

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

Foreign travel shall be subject to DEAR 952.247-70.

H.15 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 that did not require the Contractor to hold it in confidence.

The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

This clause shall flow down to all subcontracts.

H.16 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES

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

H.17 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

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

H.18 SECTION 8(A) DIRECT AWARDS (DEVIATION)

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

U. S. Small Business Administration
Alaska District Office
510 L. Street, Suite 310
Anchorage, Alaska 99501-1952

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

The contractor agrees:

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

H.19 COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL REQUIREMENTS

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

H.20 CONTRACTOR COMMUNICATION RELEASES

The DOE policy and procedure 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 communication releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

H.21 PERMITS AND LICENSES

Within sixty (60) days of award, the Contractor shall submit to the DOE Contracting Officer Representative (COR) a list of ES&H 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.22 COMMUNITY COMMITMENT

It is the policy of the National Energy Technology Laboratory (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.23 ENVIRONMENTAL, SAFETY, AND HEALTH MANAGEMENT SYSTEM POLICY AND ENVIRONMENTAL ASPECT AND OBJECTIVE/TARGET CONSIDERATIONS PROCEDURES

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 International Organization for Standardization (ISO) 14001 and Occupational Health and Safety Assessment Specification (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 ENVIRONMENT, SAFETY, AND HEALTH -- ON-SITE SERVICE CONTRACTS

- (a) The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of his/her employees, other NETL employees, and the public, and to prevent damage to the environment and NETL-owned materials, supplies, equipment, facilities, and any other NETL-owned property.
- (b) The Contractor shall comply with the requirements of NETL's environment, safety, and health (ES&H) programs as implemented through NETL directives (orders, operating plans and procedures). These programs are based on conforming to the requirements listed on NETL's focused standards list (see the Focused Standards List clause in Part I, Section H), 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.
- (c) 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 calendar 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 the 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 calendar days of the accident or incident.
- (k) The Contractor shall maintain an accurate record of onsite hours worked and shall provide this information to the Contracting Officer or his/her representative upon request in order to calculate hours-based ES&H statistics.

- (l) The Contractor shall collect metrics on environment, safety, and health performance as determined by NETL in addition to those contained in their ISM plan. These metrics may change with time. The following are examples and may not represent the actual metrics that will be required to be reported: recordable injury/illness rate (total number of OSHA-defined recordable injuries and illnesses/total hours worked); days away or restricted time rate (total number of OSHA-defined lost work day cases or restricted days cases/total hours worked); and hazardous waste generated (total cubic feet of hazardous waste shipped); number of employees who have completed ES&H training on-time; number of inspections/assessments conducted; and number of employees participating in the emergency response program. The metrics shall be provided to the contracting office or his/her representative.
- (m) NETL depends on volunteers to staff its emergency response organization (ERO), including the HAZMAT/rescue team. The Contractor shall allow participation of his/her employees in NETL's site-wide emergency response program. Participants shall be allowed the time necessary to fulfill ERO training obligations. The Contractor whose employees participate in emergency response functions shall be responsible for providing any additional liability insurance or supplemental insurance deemed appropriate by the Contractor for the ERO positions that their employees occupy.

H.25 SAFETY & HEALTH AND ENVIRONMENTAL PROTECTION

- (a) The Contractor shall implement the DOE work in accordance with all applicable Federal, State and local law as, 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.26 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.27 HAZARDOUS WASTES MANIFESTS AND LABELS

The Contractor shall not identify, on wastes manifests or container labels or otherwise, the DOE or NETL as the owner or generator of hazardous wastes without written permission, signed by either the NETL Director or both the NETL Contracting Officer and the NETL ES&H Division Director, unless expressly and specifically permitted by the contract.

H.28 LOBBYING RESTRICTION

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.

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

http://www.management.energy.gov/policy_guideline/1385.htm

H.29 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.30 PAYMENT OF OVERTIME

No overtime costs shall be incurred or paid without prior written approval of the Contracting Officer.

H.31 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 subcontractors, which were evaluated during negotiations:

NONE

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.32 ACCESS TO DOE-OWNED OR LEASED FACILITIES

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

- (1) is, or is suspected of being, a terrorist;
- (2) is the subject of an outstanding warrant;
- (3) has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
- (4) has presented false or forged identity source documents;
- (5) has been barred from Federal employment;

- (6) is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer; or
 - (7) is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer.
- (b) The Contractor shall assure:
- (1) In initiating the process for gaining physical access,
 - (i) compliance with procedures established by DOE in providing its employee(s) with any forms directed by DOE,
 - (ii) that the employee properly completes any forms, and
 - (iii) that the employee(s) submits the forms to the person designated by the Contracting Officer.
 - (2) In completing the process for gaining physical access, that its employee
 - (i) cooperates with DOE officials responsible for granting access to DOE –owned or leased facilities and
 - (ii) provides additional information, requested by those DOE officials.
- (c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee’s application for a security badge is or will be denied, the Contractor shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any contractor claim against DOE.
- (d) The Contractor shall return to the Contracting Officer or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE -owned or leased facilities by the Contractor’s employee(s), upon
- (1) the termination of this Contract;
 - (2) the expiration of this Contract;
 - (3) the termination of employment on this Contract by an individual employee; or
 - (4) demand by DOE for return of the badge.
- (e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE –owned or leased facilities.
All questions and compliance issues should be directed to the NETL Security Officer.”

H.33 COMPLIANCE WITH INTERNET VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY

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

- (1) all deliverables that involve IT that uses IP (products, services, software, etc.) 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 agrees to

- (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 Statement of Work or specifications 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.34 GREEN PURCHASING UNDER DOE SERVICE CONTRACTS

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, 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 Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and well being of Federal employees, contract service providers and visitors using the facility. Green purchasing or environmentally preferable contracting includes the initiatives described below:

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

To the extent that the services provided by the Contractor require the provision of any of the above types of products, the environmentally preferable type of product is to be furnished unless that type of 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. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, in Section I require the use of products that have biobased content, are energy efficient, or have recycled content.

SECTION I - CONTRACT CLAUSES

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

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

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

I.2 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

I.3 52.202-1 DEFINITIONS (JUL 2004)

- (a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless--
 - (1) The solicitation, or amended solicitation, provides a different definition;
 - (2) The contracting parties agree to a different definition;
 - (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
 - (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.
- (b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

I.4 952.202-1 DEFINITIONS

- (a) As prescribed in 902.200, insert the clause at FAR 52.202-1 in all contracts. The contracting officer shall substitute the following for paragraph (a) of the clause.
 - (a) Head of Agency means:
 - (i) The Secretary;
 - (ii) Deputy Secretary;
 - (iii) Under Secretaries of the Department of Energy and
 - (iv) the Chairman, Federal Energy Regulatory Commission.
 - (b) The following shall be added as paragraphs (h) and (i) except that they will be designated paragraphs (g) and (h) if Alternate I of the FAR clause is used.
 - (h) The term DOE means the Department of Energy, FERC means the Federal Energy Regulatory Commission, and NNSA means the National Nuclear Security Administration.

- (i) The term Senior Procurement Executive means, for DOE:
 Department of Energy--Director, Office of Procurement and Assistance Management, DOE;
 National Nuclear Security Administration--Administrator for Nuclear Security, NNSA; and
 Federal Energy Regulatory Commission--Chairman, FERC

I.5 52.203-3 GRATUITIES (APR 1984)

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative -
- (1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and
 - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled -
- (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c) (2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I.6 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.7 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.8 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**(a) Definitions.**

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

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

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

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

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

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

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

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

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -
 - (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or

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

I.9 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.10 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.11 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

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

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

“Covered Federal action” means any of the following Federal actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to

expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

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

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

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

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

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

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

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

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

(1) Agency and legislative liaison by Contractor employees.

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

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

- (A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or
 - (B) The application or adaptation of the person's products or services for an agency's use.
 - (iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (2) Professional and technical services.
- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
 - (iii) As used in this paragraph (c)(2), "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).
 - (iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure.

- (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.
- (2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

- (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

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

(g) *Subcontracts.*

- (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.
- (2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
- (3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

I.12 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.13 952.203-70 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.14 952.204-2 SECURITY (MAY 2009)

- (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 Part 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. 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 DEAR 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.15 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

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

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

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

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

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

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as -
 - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.
- (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.
- (c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

I.16 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2008)

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

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

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

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

“Registered in the CCR database” means that—

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
- (2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

- (b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
- (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
- (c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
 - (1) An offeror may obtain a DUNS number—
 - (i) Via the internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.
 - (2) The offeror should be prepared to provide the following information:
 - (i) Company legal business name.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company physical street address, city, state and Zip Code.
 - (iv) Company mailing address, city, state and Zip Code (if separate from physical).
 - (v) Company telephone number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).
 - (x) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

- (f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (g) (1) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to:
- (A) Change the name in the CCR database;
 - (B) Comply with the requirements of Subpart 42.12 of the FAR;
 - (C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.
- (ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.
- (2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.
- (h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

I.17 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007)

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

I.18 952.204-70 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.19 952.204-73 FACILITY CLEARANCE (MAY 2002)

Notices

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.
 - (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.20 952.204-76 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 percent nor greater than 100 percent of the total fee or profit earned for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent 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) 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 [insert 6 or 12] 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.21 952.208-70 PRINTING (APR 1984)

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

- (1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.
- (2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.
- (3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.
- (4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

I.22 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
 - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

I.23 52.215-2 AUDIT AND RECORDS - NEGOTIATION (JUN 1999)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.
- (c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to --
 - (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;

- (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.
- (d) *Comptroller General*—
- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder 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 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.24 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.25 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

- (a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because -
 - (1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
 - (2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
- (b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which -
 - (1) The actual subcontract; or
 - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (c)
 - (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
 - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

- (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2)
- (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if -
 - (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the as of date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
 - (ii) An offset shall not be allowed if -
 - (A) The understated data were known by the Contractor to be understated before the as of date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the as of date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid -
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

I.26 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

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

Modifications.

I.27 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)

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

I.28 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY. (OCT 1997)

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

I.29 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)

- (a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.
- (b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205-6(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.
- (c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

I.30 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.31 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) - ALTERNATE III (OCT 1997)

- (a) *Exceptions from cost or pricing data.*
- (1) In lieu of submitting cost or pricing data, offerors 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) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include -
 - (A) 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;
 - (B) 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;
 - (C) 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 offeror 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 provision, 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 offeror's determination of the prices to be offered in the catalog or marketplace.
- (b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:
- (1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
- (2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.
- (c) Submit the cost portion of the proposal via the following electronic media: [*Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.*]

I.32 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) - ALTERNATE III (OCT 1997)

- (a) *Exceptions from cost or pricing data.*
- (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable -
- (i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
- (ii) *Information on modifications of contracts or subcontracts for commercial items.*
- (A) If -
- (1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and
- (2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

- (B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include -
- (1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - (2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - (3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.
- (2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.
- (b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:
- (1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
 - (2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.
- (c) Submit the cost portion of the proposal via the following electronic media: [*Insert media format*]

I.33 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 sixty (60) days.

I.35 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. (MAY 2004)

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

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

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

“Service-disabled veteran-owned small business concern” -

- (1) Means a small business concern -

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

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

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

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

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR Part 124, Subpart B;
- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

“Veteran-owned small business concern” means a small business concern -

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

“Women-owned small business concern” means a small business concern -

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

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

I.36 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for -
- (1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
 - (2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
 - (4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

I.37 52.219-70XX SECTION 8(A) DIRECT AWARDS (JUNE 1998) (DEVIATION)

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

U. S. Small Business Administration
Alaska District Office
510 L. Street, Suite 310
Anchorage, Alaska 99501-1952

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

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

prior to processing any novation agreement. DOE may assign contract administration functions to a contract administration office.

The contractor agrees:

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

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

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

I.39 52.222-3 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.40 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.41 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

I.42 52.222-26 EQUAL OPPORTUNITY (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.43 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

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

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

“Executive and top Management” means any employee—

- (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
- (4) Who customarily and regularly exercises discretionary powers; and

- (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

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

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

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

“Special disabled veteran” means—

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

“Veteran of the Vietnam era” means a person who –

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—
- (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
 - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed---
- (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
 - (ii) Between August 5, 1964, and May 7, 1975, in all other cases.

- (b) *General.*

- (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as --
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - (iii) Rate of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
 - (2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
- (c) *Listing openings.*
- (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
 - (2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
 - (3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.
- (d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of

the northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.*

- (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
- (2) The employment notices shall--
 - (i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
 - (ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.
- (3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheel chair).
- (4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam Era, and other eligible veterans.

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

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

I.44 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as -
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

- (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) Postings.
- (1) The Contractor agrees to post employment notices stating -
- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

I.45 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (SEP 2006)

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on --
- (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
 - (3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.
- (b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)".
- (c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date--
- (1) As of the end of any pay period between July 1 and August 31 of the year the report is due, or
 - (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).
- (e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C.4212 to identify themselves to the Contractor. The invitation shall state--
- (1) That the information is voluntarily provided;
 - (2) That the information will be kept confidential;
 - (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
 - (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

I.46 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.47 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

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

This Statement is for Information Only:

It is not a Wage Determination

Employee Class	Monetary Wage	Fringe Benefits
27101 – Guard I	\$15.30	\$7.65
27102 – Guard II	\$17.11	\$8.56

I.48 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.

1.49 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 subjection 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>.

1.50 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

- (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 section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), 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, 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, 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, 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, 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) Is 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.51 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)

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

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or,

alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

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

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

I.52 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.53 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)

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

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

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or

products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

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

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

I.54 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

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

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

- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
- (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
- (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
- (4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
 - (i) Major group code 10 (except 1011, 1081, and 1094.
 - (ii) Major group code 12 (except 1241).
 - (iii) Major group codes 20 through 39.
 - (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
 - (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
- (5) The facility is not located in the United States or its outlying areas.

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

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

- (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
 - (ii) Continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall -
- (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
 - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

I.55 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.56 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.57 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.58 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

- (a) Definition.

Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

I.59 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.60 970.5227-1 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.61 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.62 52.227-14 RIGHTS IN DATA--GENERAL (DEC 2007)

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

"Computer database" or "database" means a collection of recorded information 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.

"Computer software" --

- (1) Means
- (i) Computer programs that comprise 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) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

"Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

"Data" 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 does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

"Limited rights" means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

"Limited rights data" means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

"Restricted computer software" means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical data," means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

"Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

- (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in--

- (i) Data first produced in the performance of this contract;
 - (ii) Form, fit, and function data delivered under this contract;
 - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
 - (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The Contractor shall have the right to--
- (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;
 - (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
 - (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
 - (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.
- (c) Copyright--
- (1) Data first produced in the performance of this contract.
- (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.
 - (ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).
 - (iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.
- (2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor--
- (i) Identifies the data; and
 - (ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this

clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

- (3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.
- (d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except--
 - (1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);
 - (2) As expressly set forth in this contract; or
 - (3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.
- (e) Unauthorized marking of data.
 - (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings.
 - (i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
 - (2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

- (3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.
- (f) Omitted or incorrect markings.
- (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.
- (2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor--
- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.
- (3) If data has been marked with an incorrect notice, the Contracting Officer may--
- (i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or
- (ii) Correct any incorrect notices.
- (g) Protection of limited rights data and restricted computer software.
- (1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall--
- (i) Identify the data being withheld; and
- (ii) Furnish form, fit, and function data instead.
- (2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.
- (3) (Reserved)
- (h) Subcontracting. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.
- (i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

- (a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.
- (b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective -
 - (1) For such period as the laws of the State in which this contract is to be performed prescribe; or
 - (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

I.64 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003)

- (a) As used in this clause--

"All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Contract date," means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a

refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

I.65 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.66 52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (FEB 2002)

- (a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.
- (b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal Holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

I.67 52.232-11 EXTRAS (APR 1984)

Except as otherwise provided in this contract no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the Contracting Officer.

I.68 52.232-17 INTEREST (OCT 2008)

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

- (b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.
- (c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if--
 - (1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
 - (2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
 - (3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).
- (d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.
- (e) Amounts shall be due at the earliest of the following dates:
 - (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
- (f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on--
 - (1) The date on which the designated office receives payment from the Contractor;
 - (2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
 - (3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.
- (g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I.69 52.232-18 AVAILABILITY OF FUNDS (APR 1984)

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

I.70 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)

Funds are not presently available for performance under this contract beyond TBD. 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 TBD, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

I.71 52.232-23 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.72 52.232-25 PROMPT PAYMENT (OCT 2008)

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 subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments --

(1) Due date.

- (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:
 - (A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).
 - (B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.
- (ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice; provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments.

- (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are --
 - (A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry

meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

- (B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.
 - (C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.
 - (D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.
- (ii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.
- (3) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.
- (i) Name and address of the Contractor.
 - (ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)
 - (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
 - (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
 - (v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
 - (vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.
 - (viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
 - (ix) Electronic funds transfer (EFT) banking information.
 - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
 - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.
 - (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
 - (x) Any other information or documentation required by the contract (e.g., evidence of shipment.)
- (4) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.
- (i) The designated billing office received a proper invoice.
 - (ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.
 - (iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.
- (5) *Computing penalty amount.* The Government will compute the interest penalty in accordance with 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 was due; and
 - (3) State that payment of the principal has been received, including the date of receipt.
 - (B) If there is no postmark or the postmark is illegible—
 - (1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or
 - (2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

- (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 payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.
- (c) *Fast payment procedure due dates.* If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.
- (d) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—
 - (1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
 - (i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
 - (ii) Affected contract number and delivery order number if applicable;
 - (iii) Affected contract line item or subline item, if applicable; and
 - (iv) Contractor point of contact.
 - (2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

I.73 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION (OCT 2003)

- (a) Method of payment.
 - (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a) (2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
 - (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either -
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).
- (b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.
- (c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.
- (d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

- (e) Liability for uncompleted or erroneous transfers.
 - (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for -
 - (i) Making a correct payment;
 - (ii) Paying any prompt payment penalty due; and
 - (iii) Recovering any erroneously directed funds.
 - (2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and -
 - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.
- (f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.
- (i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

I.74 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.75 52.233-3 PROTEST AFTER AWARD (AUG 1996)

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -
- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.76 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.77 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.78 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.79 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.80 52.242-17 GOVERNMENT DELAY OF WORK (APR 1984)

- (a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- (b) A claim under this clause shall not be allowed -

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

I.81 52.243-1 CHANGES - FIXED-PRICE (AUG 1987) - ALTERNATE II (APR 1984)

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government, in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

I.82 52.244-2 SUBCONTRACTS (JUNE 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:

TBD

- (e) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
- (i) A description of the supplies or services to be subcontracted.
 - (ii) Identification of the type of subcontract to be used.
 - (iii) Identification of the proposed subcontractor.
 - (iv) The proposed subcontract price.
 - (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
 - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
 - (vii) A negotiation memorandum reflecting -
 - (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

- (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination -
 - (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the allowability of any cost under this contract; or
 - (3) To relieve the Contractor of any responsibility for performing this contract.
- (g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

I.83 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.84 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. (JUN 2010)

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

“Commercial item” has the meaning contained Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c)
 - (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
 - (i) 52.203-13, 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) 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) 52.219-8, Utilization of Small Business Concerns (May 2004) (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 \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
 - (v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006) (38 U.S.C. 4212(a));
 - (vi) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
 - (vii) [Reserved]
 - (viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
 - (ix) 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.85 52.245-1 GOVERNMENT PROPERTY (AUG 2010)

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

"Acquisition cost" means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

"Cannibalize" means to remove 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.

"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.

"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.

"Surplus" property means excess personal property not required by any Federal agency as determined by the Administrator of the "General" Services Administration (GSA).

(b) Property management.

- (1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management except where inconsistent with law or regulation. During the period of performance, the Contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.
- (2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost, stolen, damaged, or destroyed property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).
- (3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(c) Use of Government property.

- (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) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
 - (2) Fixed-price contracts.
 - (i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause.
 - (ii) Title 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.

- (iii) If this contract contains a provision directing the Contractor to purchase property for which the Government will reimburse the Contractor as a direct item of cost under this contract--
 - (A) Title to property purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such property; and
 - (B) Title to all other property shall pass to and vest in the Government upon--
 - (1) Issuance of the property for use in contract performance;
 - (2) Commencement of processing of the property or its use in contract performance; or
 - (3) Reimbursement of the cost of the property by the Government, whichever occurs first.
- (3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.
 - (i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.
 - (ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--
 - (A) Issuance of the property for use in contract performance;
 - (B) Commencement of processing of the property for use in contract performance; or
 - (C) Reimbursement of the cost of the property by the Government, whichever occurs first.
 - (iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as "Government property"), are subject to the provisions of this clause.
- (f) Contractor plans and systems.
 - (1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:
 - (i) Acquisition of Property. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.
 - (ii) Receipt of Government Property. The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

- (A) Government-furnished property. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.
 - (B) Contractor-acquired property. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.
- (iii) Records of Government property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.
- (A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:
 - (1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).
 - (2) Quantity received (or fabricated), issued, and balance-on-hand.
 - (3) Unit acquisition cost.
 - (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
 - (5) Unit of measure.
 - (6) Accountable contract number or equivalent code designation.
 - (7) Location.
 - (8) Disposition.
 - (9) Posting reference and date of transaction.
 - (10) Date placed in service.
 - (B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.
- (iv) Physical inventory. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).
- (v) Subcontractor control.

- (A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss, theft, damage, or destruction 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, theft, damage, or destruction; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.
- (A) Loss, theft, damage, or destruction. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, theft, damage, or destruction, to the property administrator as soon as the facts become known or when requested by the Government.
 - (B) Such reports shall, at a minimum, contain the following information:
 - (1) Date of incident (if known).
 - (2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).
 - (3) Quantity.
 - (4) Unique-item Identifier (if available).
 - (5) Accountable Contract number.
 - (6) A statement indicating current or future need.
 - (7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.
 - (8) All known interests in commingled property of which the Government property is a part.
 - (9) Cause and corrective action taken or to be taken to prevent recurrence.
 - (10) A statement that the Government will receive any reimbursement covering the loss, theft, damage, or destruction, in the event the Contractor was or will be reimbursed or compensated.
 - (11) Copies of all supporting documentation.
 - (12) Last known location.
 - (13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.
- (vii) Relief of stewardship responsibility. Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is--
- (A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, theft, damage, or destruction of Government property;
 - (B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

- (C) Disposed of in accordance with paragraphs (j) and (k) of this clause.
- (viii) Utilizing Government property.
 - (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.
 - (B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government 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, theft, damage, or destruction cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.
- (2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.
- (3) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.
- (g) Systems analysis.
 - (1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(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, theft, damage, or destruction, to the Government property furnished or acquired under this contract,

except when any one of the following applies--

- (i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.
 - (ii) The loss, theft, damage, or destruction, 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, theft, damage, or destruction, 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, theft, damage, or destruction, of Government property occurred while the Contractor had adequate property management practices or the loss, theft, damage, or destruction, of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.
- (2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, theft, damage, or destruction. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.
 - (3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, damage, or destruction, of Government property.
 - (4) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.
- (i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. 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.
 - (1) Scrap to which the Government has obtained title under paragraph (e) of this clause.
 - (i) Contractor with an approved scrap procedure.
 - (A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

- (B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures).
 - (C) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts and scrap that--
 - (1) Requires demilitarization;
 - (2) Is a classified item;
 - (3) Is generated from classified items;
 - (4) Contains hazardous materials or hazardous wastes;
 - (5) Contains precious metals that are economically beneficial to recover; or
 - (6) Is dangerous to the public health, safety, or welfare.
 - (ii) Contractor without an approved scrap procedure. The Contractor shall submit an inventory disposal schedule for all scrap. The Contractor may not dispose of scrap resulting from production or testing under this contract without Government approval.
- (2) Predisposal requirements.
- (i) Once the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority--
 - (A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical;
 - (B) May purchase the property at the acquisition cost; or
 - (C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).
 - (ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.
- (3) Inventory disposal schedules.
- (i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify--
 - (A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;
 - (B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and
 - (C) Termination inventory.
 - (ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.
 - (iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for--
 - (A) Special test equipment with commercial components;

- (B) Special test equipment without commercial components;
 - (C) Printing equipment;
 - (D) Information technology (e.g., computers, computer components, peripheral equipment, and related equipment);
 - (E) Precious metals 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, 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.
- (4) Submission requirements. The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--
- (i) 30-days following the Contractor's determination that a Government property item is no longer required for performance of this contract;
 - (ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or
 - (iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.
- (5) Corrections. The Plant Clearance Officer may--
- (i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and
 - (ii) Require the Contractor to correct an inventory disposal schedule.
- (6) Postsubmission adjustments. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.
- (7) Storage.
- (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may

entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

- (ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage 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.
- (8) Disposition instructions.
- (i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.
 - (ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. 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.
 - (iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.
- (9) Disposal proceeds. As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract or to the Treasury of the United States as miscellaneous receipts.
- (10) Subcontractor inventory disposal schedules. The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.
- (k) Abandonment of Government property.
- (1) The Government shall not abandon sensitive Government property or termination inventory without the Contractor's written consent.
 - (2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.
 - (3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.
- (l) Communication. All communications under this clause shall be in writing.
- (m) Contracts outside the United States. If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that -
- (1) Occurs after Government acceptance of services performed under this contract; and
 - (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of -
- (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

**1.87 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)
(MAY 2004)**

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) 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) for materials, services, or facilities, 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 approval or ratification will be final for purposes of this clause.
 - (6) As directed by the Contracting Officer, transfer title and 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; and
 - (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.
- (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 (b) (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.
- (c) 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.
- (d) 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 title to those 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.
- (e) 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.
- (f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of

this clause:

- (1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b) (9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
- (2) The total of -
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;
 - (ii) 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 subdivision (g)(2)(I) of this clause; and
 - (iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.
- (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.
- (h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- (i) The cost principles and procedures of 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 (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of 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 the provisions of this clause and not recovered by or credited to the Government.
- (l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing

by the Contracting Officer.

- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (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) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

I.88 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

- (a) (1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to -
 - (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or
 - (iii) Perform any of the other provisions of this contract (but see subparagraph (a) (2) of this clause).
- (2) The Government's right to terminate this contract under subdivisions (a) (1) (ii) and (1) (iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
- (b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of

either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

- (e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.
- (f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.
- (h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

1.89 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.

**Statement of Work
Site Security Services for the
National Energy Technology Laboratory
Version 1.0
February 2011**

1.0 SCOPE OF WORK

The Contractor shall provide the necessary management and administrative oversight, training, and labor to provide physical security services for the U.S. Department of Energy (DOE), National Energy Technology Laboratory (NETL), at the Pittsburgh, Pennsylvania, Morgantown, West Virginia, and Albany, Oregon facilities, in accordance with DOE M 470.4-3 Contractor Protective Force and supportive of the NETL site security plans for each site. Physical security shall be provided 24 hours per day in accordance with the direction provided herein. The level of effort will be determined according to the specific Security Condition (SECON) level DOE is under at any particular time as specified in the SECON Implementation Plan, under NETL Operating Plan 470.4-10, and as directed by government accordingly in conjunction with the levels described herein. The Contractor shall provide all personnel, screening, supervision, training, equipment, supplies, uniforms, and accessories as necessary to perform the Security Services as defined in this Statement of Work (SOW) and in the contract. In performing the work specified in this contract, the Contractor shall provide competent, trained, uniformed security officers who meet the standards for providing private guard services in the applicable locality and state and the standards described herein. The contractor shall maintain all required licensing for each state to include applicable business and security requirements.

2.0 APPLICABLE DOCUMENTS

The following documents are referenced in the Statement of Work. Services provided shall comply with, but not be limited to the following regulations, requirements, and procedures:

- 2.1 DOE Directives (Orders and Manuals) governing Safeguards and Security Programs
- 2.2 Federal Property Management Regulations
- 2.3 NETL Emergency Response and ES&H Directives
- 2.4 NETL Safeguards and Security Directives (Facility Security Plans, Orders, Procedures and Technical Guidance)
- 2.5 Code of Federal Regulations
- 2.6 State of Oregon and City of Albany regulations and policy as they apply to providing private guard services
- 2.7 State of Pennsylvania and South Park Township of Allegheny County regulations and policy as they apply to providing private guard services
- 2.8 State of West Virginia and City of Morgantown regulations and policy as they apply to providing private guard services.
- 2.9 DOE National Training Center (NTC) approved training plan

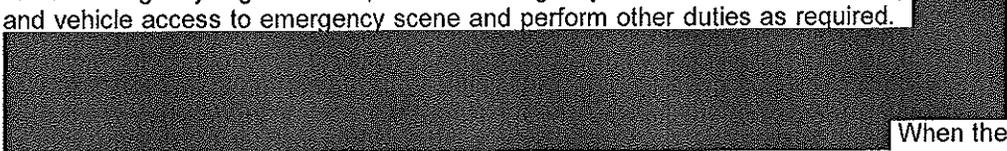
3.0 DESCRIPTION OF SERVICES

The Contractor shall provide the security service staffing levels as dictated per the current SECON level unless otherwise directed by the government. The required staffing levels and post coverages are as specified in this SOW in Section 6.0. Security services and technical requirements to be provided during the execution of this contract include:

- 3.1 Provide security services, as defined by the Government, for its customers, visitors, employees, and vendors.
- 3.2 Respond to all alarm conditions and enforce all access control procedures through the identification of personnel and control of entrances and exits.
- 3.3 Enforce control over removal of Government property, documents, or vital equipment as identified by the NETL.
- 3.4 Immediately report to authorized DOE security staff, local law enforcement, and offsite agencies when required, incidents involving persons observed attempting to gain, gaining, or who have gained unauthorized access to any NETL facility.
- 3.5 Respond to suspicious incidents and take reports. When necessary and deemed appropriate, follow incidents to their conclusion in accordance with appropriate government directive and contractor provided general and post orders.
- 3.6 Cooperate with and assist law enforcement agencies in connection with crimes committed against NETL, including maintaining the scene to protect possible evidence in accordance with established procedures.
- 3.7 Respond to and provide assistance to DOE federal and contractor employees, security administration, visitors, and emergency response personnel involving security-and/or safety-related situations, demonstrating common sense and good judgment and in compliance with NETL's policies and procedures.
- 3.8 Comply with additional responsibilities set forth in special orders, manuals, and procedures issued by the Government but not specifically mentioned in this Statement of Work.
- 3.9 Develop, maintain and document training and certification of Security Officers in those items, skills, concepts and other requirements as required in accordance with NTC-approved training program.
- 3.10 Maintain knowledge of appropriate Federal, state, and local statutes and ordinances, regulatory requirements, and periodic updates provided by the Government as they pertain to security work at NETL. Security personnel shall be trained as stated in DOE M 470.4-3 based on site specific Job Analysis and Training Programs.
- 3.11 Meet qualification requirements as stated in DOE M 470.4-1, DOE M 470.4-3, and 10 CFR 1046.
- 3.12 Guard property against theft, sabotage, and trespassing.
- 3.13 Conduct routine and random patrols throughout the NETL sites. Routes shall be varied in order not to establish a set pattern.
- 3.14 Monitor the NETL Fire Protection System to ensure that, in the event of a fire, access by the fire department is not restricted.
- 3.15 Conduct perimeter patrol by inspecting the entire perimeter fence [REDACTED] and submit work orders through NETL's work control system to have the fence repaired. Monitor site security systems and infrastructure and submit work orders or notify the NETL Facility Security Officer and COR as appropriate to initiate repairs.

- 3.16 Report security deficiencies and incidents and prepare a weekly highlights report. This report shall be provided to the NETL Facility Security Officer and COR within 2 working days after the end of the week being reported.
- 3.17 Guard and protect all Government information, documentation, material, buildings, and equipment from unauthorized access, theft, or sabotage.
- 3.18 Detect all trespassers or persons who gain or attempt unauthorized access to the Laboratory by monitoring the Closed Circuit Television System in the Security Control Center and conducting random patrols throughout the site. The Contractor shall ensure employees have a current and valid driver's license before allowing the employee to operate a Government-owned vehicle at NETL.
- 3.19 Provide traffic, parking and pedestrian control services. The Contractor shall direct traffic and issue written violations and warnings as required by NETL to ensure employee conformance to traffic standards. Tactful and courteous warnings or citations shall be made using the NETL provided forms to individuals who violate site parking and traffic regulations. Abandoned vehicles shall be reported promptly in accordance with site requirements and current SECON Level.
- 3.20 At the direction of the COR, assist in the conduct of inquiries related to losses and thefts of Government and personal property, employee misconduct, and other security related incidents and report them to the NETL Facility Security Officer/Inquiry Official and COR. Submit monthly and annual reports of thefts to the NETL Facility Security Officer and COR.
- 3.21 Conduct searches of vehicles and hand-carried items to ensure that prohibited articles are not introduced onto the site or government property improperly removed from the site. Vehicle searches shall be standardized and conducted in accordance with written directions contained in approved post orders.
- 3.22 Enforce personnel identification procedures as prescribed by NETL directives and policies. Officers shall issue written violations and warnings as required to ensure employee conformance to proper display of badges.
- 3.23 Lock and unlock designated buildings, gates, and spaces on a predetermined schedule, and open buildings or spaces for authorized personnel. Program and operate facility access control and intrusion detection systems at each facility. Report any needed supplies, maintenance, or malfunctions of the systems to the NETL Facility Security Officer and COR. Monitor and respond to security alarms, intrusion detection systems, and other protection devices or equipment as detailed in NETL policies and post orders.
- 3.24 Monitor building conditions, control and alarms systems such as gas, fire, and HVAC. Turn lights and equipment off when not in use after non-duty hours, and report any unusual occurrences.
- 3.25 Maintain a log of all incidents, observations, and security activity on a site specific security blotter. If conditions warrant additional documentation and notification, an incident report shall be written and submitted to the NETL Facility Security Officer, COR and other organizations as appropriate.
- 3.26 Provide employee badging services to include operation of the US Access Credentialing system and local badging system at each facility. Badging shall be done in accordance with government directives by duly appointed and trained officers. Officers conducting badging operations must be properly screened and approved for issuance of a US Access Credential and receive an annual briefing on protection of personally identifiable

information. Provide system administration duties germane to the functioning of the US Access Credentialing system to conduct the following roles within the US Access Credentialing system: Security Officer, Enrollment Officer, and Activator.

- 3.27 Maintain, issue, and retrieve identification badges, keys, access cards, and vehicle parking tags, and other security related items. Conduct annual badge inventory. Operate and manage the Integrated Access Control system for each facility to include managing access privileges.
- 3.28 Maintain the master keying system and associated database for each facility. Implement or coordinate the repair and/or replacement of lock cores and pinning of locksets and re-key locks as necessary when personnel changes or security conditions warrant such actions, install new locks and locksets. Perform and/or coordinate maintenance activities and change combination-type safe locks, and maintain a supply of locksets and hardware for immediate replacement needs, maintain spare parts and keys. Provide locksmith services by a licensed, bonded locksmith. Provide locksmith supplies such as keys, cores, and associated equipment. Maintain keying and combination records to the extent necessary to meet DOE requirements. When necessary refer hardware and maintenance needs to the facilities work control system.
- 3.29 Raise and lower Government provided United States and Departmental flags at the request of DOE, and when necessary to replace tattered and torn flags. Fly flags in accordance with Government specified holidays and observances assuring the flags are flown at half staff as required or as directed by the Facility Security Officer and COR in response to special orders issued by the President of the United States or the Governors of the locale.
- 3.30 Monitor weather conditions and notify designated personnel for snow removal and other adverse weather conditions affecting their respective facility. Snow removal notification protocol is defined via technical direction from the COR and shall be reflected in the facility post orders.
- 3.31 When emergency situations arise that may require immediate attention, the Contractor shall divert uniformed personnel from their normal assigned duties to meet these conditions, as directed by designated site Emergency Preparedness Officials or NETL Facility Security Officer. Personnel will provide for notifications of onsite personnel and offsite emergency organizations, monitor emergency communications, control personnel and vehicle access to emergency scene and perform other duties as required.

When the personnel diverted are no longer needed for the special work assignment, they shall be directed to return to their normal assignment. No additional costs, other than the additional man hours required above and beyond the fixed price hours, will be charged to the government for the diversion of security personnel to meet special work assignments.
- 3.32 Receive official mail, messages, and packages during non-duty hours as approved by the NETL Facility Security Officer and COR.
- 3.33 Formal Job Task Analysis shall be conducted by the contractor and used in the development of a formal training program which shall in turn be approved by the DOE NTC. The contractor shall also maintain and document training and certification of Security Officers in those items, skills, concepts and other requirements as outlined in the contract.

- 3.34 Work cooperatively with the Foreign Visit and Assignment Program. The contractor shall conduct planning and actions as necessary to assist in establishment and to enforce security policies with respect to foreign national visitors and assignees.
 - 3.35 Provide supervisory function to the contracted security officers in accordance with DOE M470.4-3 and to a level which successfully manages the safety of officers, ensures compliance with the SOW, and addresses issues with the conduct of personnel under its employ.
- 4.0 PERSONNEL SCREENING AND QUALIFICATION REQUIREMENTS Key personnel shall include the Program Manager at a minimum. Key Personnel shall be identified in writing with detailed qualifications to the CO and COR prior to the initiation of the contract and throughout the contract prior to placement in the position. The government shall notify the contractor within 5 working days of acceptance or rejection of an individual's qualifications for key management personnel. Key personnel can be assigned to any position/post. Temporary and developmental assignments are acceptable to allow for coverage during absences and development of personnel.
- 4.1 The Contractor shall provide a management structure that ensures the elements of security as required in DOE M 470.4-3, latest edition. The Contractor shall provide at a minimum personnel to fill posts as described in Section 6.0 "Required Hours and Posts."
 - 4.2 All personnel providing security services shall successfully complete the following screening and credentialing actions in accordance with the schedule that follows. DOE M470.4-3 describes the basic requirements. :
 - a. All officers shall be fully compliant and licensed with all applicable state and local qualification and licensing requirements within 90 days of initial hiring or contract award, unless otherwise required sooner by state or local law. All qualifications and licensing requirements once attained shall be maintained by the contractor throughout the contract period.
 - b. All officers shall submit a complete Personal Identity Verification/HPSD-12 (PIV application package) during their first calendar week of employment. All officers shall successfully complete the adjudication process and be approved for a US Access Credential within six calendar months of being hired. Any officers not successfully completing said processing within the timeframe specified will not be utilized at NETL after this timeframe has elapsed.
 - 4.3 Possess a high school diploma or GED.
 - 4.4 Demonstrate the ability to read and write in English equivalent to a high school graduate. Have the ability to verbally communicate in English; particularly in emergency situations requiring clear and definitive articulation to assure confidence, control and safety of those involved.
 - 4.5 Pass a physical examination provided by the NETL/DOE Designated Physician during the first week of employment, prior to individual assignment and annually thereafter. A DOE Designated Physician, per 10 CFR 1046.3, is available through the MGN and PGH OHUs, and available through contracted services at the Corvallis Clinic in ALB. The physical examination for Security Officers shall be in accordance with 10 CFR 1046 Subpart B Appendix A. Each employee, as a condition of employment, must submit to a placement examination, periodic comprehensive examinations, return to work

examinations, and termination of employment examination. Contractor personnel will also be provided the hepatitis series for each employee as required by the OSHA Blood borne Pathogens regulation.

4.6 All security officers shall be US Citizens.

5.0 STANDARDS OF CONDUCT

5.1 Neglect of Duties shall not be allowed. This includes sleeping on duty, unreasonable delays or failures to carry out assigned tasks, conducting personal affairs during duty hours, submitting false reports, abandoning posts, misuse of Government property, and refusing to render assistance or cooperate in upholding the integrity of the security at the site. Violations to this requirement and associated disciplinary actions will be provided by the Contractor to his/her employees.

5.2 Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words, actions, or fighting shall not be permitted. Officers shall remain professional in all dealings and exercise restraint when confronted with verbal and/or physical assaults, exercising the force continuum as needed to address the situation. Violations to this requirement and associated disciplinary actions will be provided by the Contractor to his/her employees.

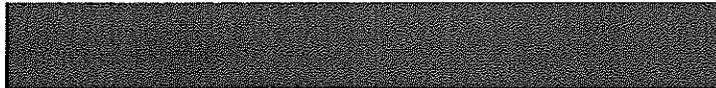
5.3 The Contractor shall not allow any employee (while on duty) to possess, sell, consume, or be under the influence of intoxicants, drugs, or substances which produce similar effects. Violations to this requirement and associated disciplinary actions will be provided by the Contractor to his/her employees.

5.4 The contractor shall not employ any officer whose conduct, on or off the job, would cause doubt about the officer's honesty, integrity, or trustworthiness. Officers who fail to faithfully execute their duties, engage in workplace misconduct, become involved in criminal proceedings, or otherwise fail to conduct themselves in a professional manner can be restricted from providing services under this contract by the contracting officer. Any officer with pending criminal charges shall be suspended from the site pending the outcome of the criminal case.

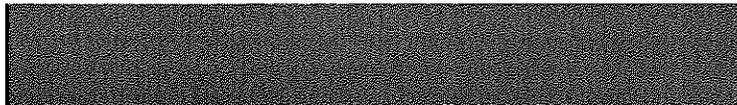
6.0 REQUIRED HOURS AND POSTS

The normal hours of operation at NETL are 8:00 a.m. until 4:30 p.m. The following are the standard base shifts:

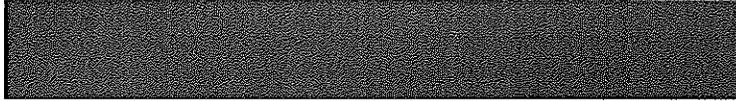
MORGANTOWN



PITTSBURGH



ALBANY

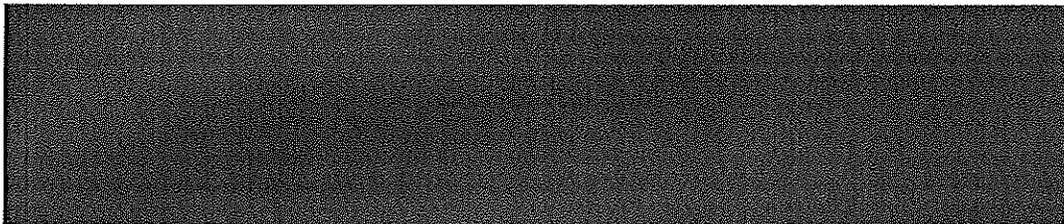
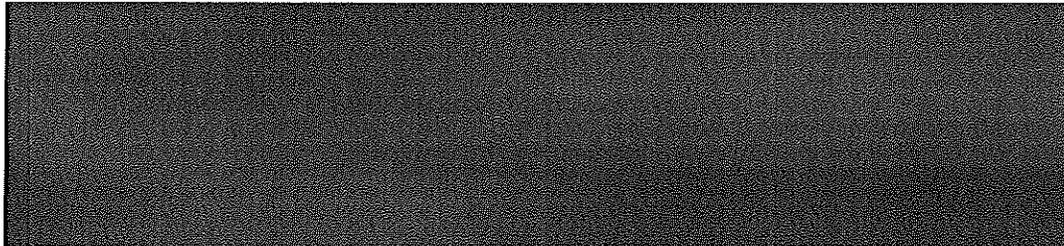
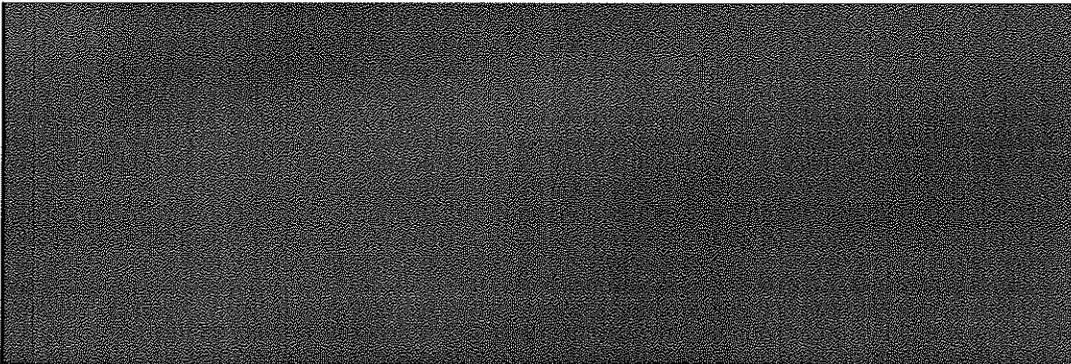


Shift alternatives to provide coverage and/or allow for improved employee scheduling can be considered but must be requested and approved in writing by the COR prior to any shift changes.

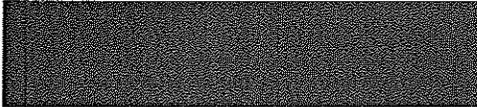
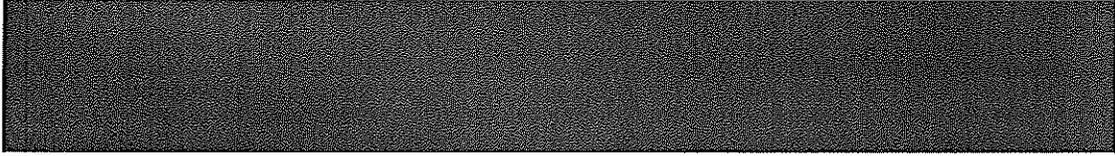
The number/man-hours of Security Officers needed per shift is determined by the current SECON Level that DOE has declared per DOE Notice 473.8. When SECON levels are changed, the COR shall notify the contractor verbally as soon as the information is known. The COR shall provide written direction to the contractor within 24 hours following such verbal direction or prior to the close of business on the next business day if the event occurs during a holiday or weekend. Additional staffing may be needed during special events and during emergencies. Staffing levels shall be such to successfully meet the requirements of protection established for the SECON Level and to successfully manage security roles and responsibilities during emergencies and special events.

SECON Levels 3, 4, 5:

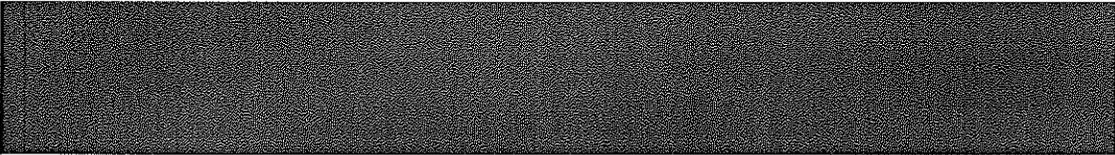
These are the minimum post requirements.   Specific inspection frequencies are identified in the Facility Security Plan. Fixed post locations are established per DOE M 470.4-3 guidance by NETL.   The schedule addresses requirements by DOE to establish post locations and ensure that proper protective force work hour requirements are enforced.



SECON Level 2:



SECON Level 1:



7.0 OPERATING PROCEDURES

The Contractor shall prepare and maintain a Security Directives Manual which contains all Security related internal and external policies, plans, and procedures. This manual must include DOE and NETL Security Directives, General Orders, Post Orders, and Emergency Operations Directives. Post Orders and General Orders containing any necessary direction and detail for the operation of the individual posts shall be prepared, issued and maintained. Both the Security Directives Manual and the Post/General Orders shall be updated as changes to the constituent documents are issued. General Orders, Post Orders and Emergency Directives shall be available to the COR and any other federal authority for review. Duty logs and other documentation that support contractor adherence to the contract and facility security plans shall be available to the COR or his/her designee. All officers are responsible for familiarizing themselves with the contents of the DOE and NETL Security Directives and shall be able to demonstrate knowledge and understanding of all General and Post Orders.

Inspection frequencies are established in the facility security plans, and are incorporated by reference in the SOW as an applicable directive.

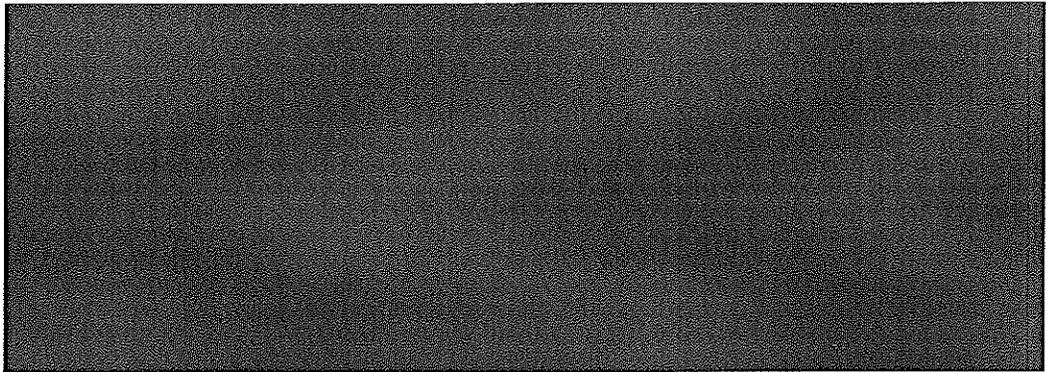
8.0 GOVERNMENT-FURNISHED ITEMS

8.1 Patches indicating the government agency shall be provided by NETL. Identifying patches shall be issued and controlled by the contractor per a plan approved by the NETL Facility Security Officer and COR. No other patches shall be authorized for wear on the uniform.

8.2 Footwear meeting the current NETL requirements shall be provided by the NETL, two pair of boots shall be purchased annually for each officer. Style and type will be determined by the NETL Facility Security Officer and COR. NETL provided rubber overshoes and cleats may be worn as necessary during inclement weather. For officers with special needs, a written request must be submitted to the COR and the request will be referred to the NETL footwear program manager for final determination on possible substitutions and any special allowances taking both medical and operational needs into consideration.

8.3 Approved DOE/NETL Security Shields, The contractor shall be provided with numbered shields that have been officially approved by DOE for issuance and use as official identification for security officers. Each officer shall be issued two identically numbered shields. The shield shall be worn on the outer garment of the uniform at all times. Issuance and control of the shields shall be done in accordance with detailed technical direction provided by the COR.

8.4



8.5 In addition to the training required by the NTC Approved Training Program, all Contractor employees shall receive the following government-provided training within six months of beginning assignment at NETL and as a refresher on an annual basis. Training will include, but not be limited to:

1. Hazardous Communications Introduction
2. Confined Space Entry
3. Electrical Safety & Lockout/Tagout
4. Hearing Conservation (For officers employed at the Pittsburgh and Morgantown Facilities)
5. Blood borne Pathogens
6. Waste Management/Hazwaste Overview
7. ES&H Awareness Training
8. Chemical Hygiene Training
9. Fire Extinguisher Training
10. HAZWOPER Awareness Level
11. First-Aid
12. CPR Heart Saver
13. Heart Saver Automatic External Defibrillator Training and Certification. (For officers employed at the Pittsburgh and Morgantown Facilities)
14. General Employee Emergency Response Training and Emergency Response Organization Position Specific Training

This list will vary depending on requirements. Annual refresher courses on selected subjects will be completed through computer-Based training.

9.0 CONTRACTOR-FURNISHED ITEMS

The Contractor shall furnish, install, operate, and maintain in an acceptable manner all other equipment, materials, and supplies that are not specified as furnished by the U.S. Government but are required by the Contractor for performance under this contract. This includes, but is not limited to the following:

9.1 Uniforms. All security officers shall wear the NETL Field Uniform. Uniforms shall be worn at all times while on duty, unless otherwise authorized by the COR. Uniforms shall be issued to officers upon entering duty and shall surrender all uniform items except the

shall be developed, approved and executed in accordance with DOE M 473.2-2 Protective Force Program Manual. A specific Job Task Analysis and Training Program shall be developed, approved, and maintained for each position. This will include continuing revision, updates, and approvals throughout the contract period. The Training Approval Program will encompass all personnel assigned duties under this contract. All instructors shall have completed, or complete within the first year of assignment, Basic Instructor Training offered through the DOE Central Training Academy. Renewal of this training is also required for instructors on a 3 year basis. The contractor shall allocate 40 hours of additional time per year per officer for compliance with the annual training requirements stated here and elsewhere in the SOW.

Certification of each employee's completion of all required training courses shall be maintained on file by the Contractor. Training shall be provided by persons who are qualified to instruct the specific subject.

Each probationary personnel shall be required to successfully complete at least 40 hours of on-the-job training, rotating on each shift, and prior to beginning assignment at NETL

If the Contracting Officer determines Contractor employees do not possess required training/ certification, the Contracting Officer will direct the Contractor to immediately remove such employees from duty and provide qualified replacements at no additional costs the Government.

- 9.5 Keying Supplies. Consumable keying supplies such as cores, key blanks, and cutting supplies, shall be purchased by contractor as needed to meet demand and maintain spares. Expenses are to be billed under separate invoice.