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DEPARTMENT OF ENERGY**

OAK RIDGE OPERATIONS

**LOCKHEED MARTIN ENERGY RESEARCH
CORPORATION**

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AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING	PAGE OF PAGE 1
2. CONTRACT (Proc. Inst. Ident.) NO.		3. EFFECTIVE DATE		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.	
5. ISSUED BY		CODE	6. ADMINISTERED BY (If other than Item 5)		CODE
7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code)				8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)	
				9. DISCOUNT FOR PROMPT PAYMENT	
				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN:	
CODE		FACILITY CODE		ITEM	
11. SHIP TO/MARK FOR		CODE	12. PAYMENT WILL BE MADE BY		CODE
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 USC 2304(c) () <input type="checkbox"/> 41 USC 253(c) ()			14. ACCOUNTING AND APPROPRIATION DATA		
15A. ITEM NO.	15B. SUPPLIES/SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE
15G. TOTAL AMOUNT OF CONTRACT					\$

16. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
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	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COST		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
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19A. NAME AND TITLE OF SIGNER (Type or print)		20A. NAME OF CONTRACTING OFFICER	
19B. NAME OF CONTRACTOR		20B. UNITED STATES OF AMERICA	
BY _____ (Signature of person authorized to sign)		BY _____ (Signature of Contracting Officer)	
19C. DATE SIGNED		20C. DATE SIGNED	

PART I - THE SCHEDULE

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B. 1 SERVICES BEING ACQUIRED (JUN 1995)

- (a) The Contractor shall provide the personnel, equipment, materials, supplies, and services necessary to perform the mission, and manage, operate, and maintain existing and new facilities of the Oak Ridge National Laboratory (ORNL) as fully described in Section C, Descriptions/Specifications/Work Statement, or as may be directed by the Contracting Officer within the scope of this contract, or as may be agreed upon by the Contractor and the Contracting Officer.

B. 2 FIXED FEE - ORNL (JUN 1995)

The Government shall pay a fixed fee to the Contractor for performing the ORNL mission work as follows:

January 1, 1996 - September 30, 1996	\$5,107,000
October 1, 1996 - September 30, 1997	\$6,925,000
October 1, 1997 - September 30, 1998	\$7,222,000
October 1, 1998 - September 30, 1999	\$8,600,000
October 1, 1998 - March 31, 2000	\$4,600,000



PART I - THE SCHEDULE

SECTION C - DESCRIPTIONS/SPECIFICATIONS/WORK STATEMENT

C. 1 STATEMENT OF WORK (OCT 1995)

(a) INTRODUCTION

The Contractor shall manage the missions of the Oak Ridge National Laboratory (ORNL), a Federally Funded Research and Development Center (FFRDC), in a manner consistent with the DOE Strategic Plan and the principles of performance-based contracting. ORNL is a multiprogram DOE national laboratory which supports DOE missions for enhancing energy security and advancing the frontiers of science and technology and other research and development (R&D) missions as appropriate.

(b) DESCRIPTION OF WORK AND SERVICES

The work to be performed is listed below and shall include the services necessary to support that work. With respect to the facilities described in paragraph (4) of this section (b), the Contractor shall manage, operate, and maintain them in accordance with programs approved in writing by DOE.

Part I – Programmatic Activities:

- (i) R&D in the physical and life sciences, energy and engineering technologies, computational sciences, and energy-related socio-economics for DOE which include:
 - (A)  Office of Energy Research: Magnetic fusion, high energy physics, nuclear physics, basic energy sciences (including materials sciences, chemical sciences, engineering and geosciences, and energy biosciences), biological and environmental research, computational sciences, technology transfer, and other programs and activities. This also includes the Office of Laboratory Policy and Infrastructure Management which provides multiprogram laboratory facility support and other programs and activities.
 - (B) Office of Energy Efficiency and Renewable Energy: Electric energy systems, energy storage systems, geothermal energy, hydrogen research, hydropower, solar energy, buildings sector R&D, industrial sector R&D, transportation sector R&D, technical assistance, utility sector R&D, and other programs and activities.
 - (C) Office of Fossil Energy: Coal R&D, gas R&D, petroleum R&D, fossil energy environmental restoration, innovative clean coal technology, strategic petroleum reserve, and other programs and activities.
 - (D) Office of Nuclear Energy: Nuclear energy R&D, naval reactors, uranium enrichment, nuclear energy policy and management, isotope production and distribution, and other programs and activities.
 - (E) Office of Defense Programs: Fissile materials disposition, weapons activities, materials production, and other programs and activities.

- (F) Office of Environmental Management: Defense and non-defense environmental restoration and waste management and other programs and activities.
 - (G) Office of Environment, Safety, and Health: Environmental R&D, nuclear safety policy, epidemiological activities, security evaluations, nuclear safety, and other programs and activities.
 - (H) Other DOE Offices: Other programs and activities as may be appropriate.
 - (I) Federal Energy Regulatory Commission.
- (ii) Production and/or distribution of radioisotopes, stable isotopes, transuranics, special nuclear and source materials, irradiation services, and other materials or products as DOE may authorize and direct.
 - (iii) Development and operation of special research facilities, R&D partnerships, and certain educational functions related to the activities in Paragraphs (i) and (ii) above.
 - (iv) In consultation with DOE, the Contractor shall charter a high-level, broadly based Advisory Board to ensure that it receives independent scientific, technical, and management guidance and overview on the performance of ORNL. The Board shall include nationally prominent representatives from the academic community and from industry chosen for their diverse scientific and management skills and broad perspectives. Consistent with the provisions of the contract, the Board shall be responsible to the Contractor and shall provide overview and guidance concerning the performance of ORNL relating to organization, planning, program evaluation, cooperative programs with universities and industry, R&D emphasis and priority, and other appropriate issues to help ensure that ORNL continues to be a leading national R&D center of the highest quality.

Part II – Other Activities:

- (i) Technology transfer activities, shall be in support of the mission of ORNL, and may include mechanisms such as Cooperative Research and Development Agreements, Direct Assistance Programs, User Agreements, User Facilities, and license agreements in which research and development resources are leveraged with private sector partners.
- (ii) Land-use planning and land management services for the DOE Oak Ridge Reservation (ORR). The ORR consists of 34,545 acres of Federally-owned land. This contract addresses land for which Lockheed Martin is assigned management responsibility which includes the entire ORR, with the exception of TVA areas and those assigned to other contractors as identified in the Facility Information Management System (FIMS, formerly RIPS) database and shown in Figure 2 of the draft ORR Management Plan dated June 9, 1995 (ES/EN/SFP-37). Specifically, the Contractor will be responsible for:
 - (A) Land and facility planning for the ORNL Site.
 - (B) Management of the National Environmental Research Park and the Reservation, exclusive of the K-25 and Y-12 sites, including:

The safe and environmentally acceptable execution of assigned programmatic activities conducted on the Reservation.

Forestry management and wildlife management, including the maintenance of effective relationships with the Tennessee Wildlife Resources Agency.

Assuring the safe, secure, and environmentally acceptable execution of activities which provide the public controlled access to the Reservation (e.g., hunting programs).

Assuring the safe and environmentally acceptable infrastructure of the Reservation in roads, road maintenance, hazard identification, integration of day-to-day activities, etc.

- (C) Supporting the Reservation Management process in a joint Lockheed Martin Land Use Committee which will serve as the integrating body for Reservation planning, practices and budgets in support of DOE land management activities. The charter and membership of this committee will be approved by DOE.
- (iii) Facility transition involving the preparation of ORNL facilities for safe shutdown and transfer to the Surplus Facilities Program.
- (iv) Other services performed in Oak Ridge and elsewhere as agreed to in writing by DOE and the Contractor, as described in (c)(2), Related Services.

Part III - Services:

- (i) ORNL is responsible for providing services as needed to support the functions described above in Parts I and II. This includes the development and implementation of related policies and procedures, as appropriate. These services may be provided by ORNL, purchased or provided by other elements of the Lockheed Martin Corporation, or outsourced, on the basis of make/buy analyses. These determinations will be made in the best interest of the Government and will provide reasonable transition periods, as appropriate.
- (ii) Services may be obtained from Lockheed Martin Energy Systems to the extent available, in conducting any and all of the activities set forth in the Statement of Work.
- (iii) Construction services shall be provided for all programs and activities described in the Statement of Work. This includes construction of line item projects, general plant projects, operations funded projects, other capital projects including the acquisition of basic capital equipment in support of ORNL missions and associated support activities, other projects in support of all missions, and other projects as DOE and the Contractor shall agree in writing.
- (iv) Engineering services shall be provided to support the programmatic missions of ORNL. This includes engineering services for operations, maintenance, construction, decommissioning, and demolition of facilities.
- (3) FFRDC Sponsorship Agreement. This contract constitutes the Sponsorship Agreement between DOE (the Sponsor) and the Contractor for the management and operation of ORNL, a designated FFRDC, pursuant to 48 CFR 35.017. It is understood that DOE, as

the Sponsor, reserves the right to enter into an agreement with one or more other Federal agencies to provide for multiple sponsorship of ORNL. The Contractor's performance, under this contract, on work for other Federal agencies and non-Federal entities is governed by paragraph (iv) of Part II - Other Activities of Section (b) of the Statement of Work.

- (4) Description of Facilities. The Contractor has responsibility for management of the Government-owned buildings and facilities at the ORNL Site and the Oak Ridge National Environmental Research Park (NERP), together with the utilities and appurtenances thereto. In addition, ORNL utilizes certain buildings at the Y-12 plant which house major facilities and equipment in support of ORNL programs. It is recognized that some of the facilities on the ORNL Site will be utilized by the Environmental Management and Enrichment Facilities Program.

(c) GENERAL

(1) Other Activities and Services

- (i) Facilities Reuse/Conversion. Services, support, and integration of activities in support of reusing/converting those DOE facilities and property that are determined to have no future DOE mission to commercial or community activities. The Contractor's site planning activities shall be conducted to ensure that the ultimate use of the sites is compatible with the concerns of DOE, regulatory agencies, and stakeholder groups.
- (ii) To the extent requested by DOE, perform maintenance, protective, and service functions outside the plant areas.
- (iii) Provide services as needed to support the work described above. This includes the development and implementation of related policies and procedures, as appropriate.
- (iv) Efforts associated with workforce restructuring initiatives defined by Section 3161 of the FY 1993 National Defense Authorization Act including preference in hiring requirements consistent with Oak Ridge Operations Workforce Restructuring Plans.

(2) Related Services

- (i) In addition to the services specifically described in other provisions of this SOW, the Contractor shall perform services as DOE and the Contractor shall agree in writing will be performed from time to time under this contract at Oak Ridge or elsewhere, as follows:
 - (A) Services incidental or related to the services described in other provisions of this SOW;
 - (B) Services, using existing facilities and capabilities, for other Federal agencies and non-Federal entities in accordance with policies and procedures established by DOE;
 - (C) Services, using existing or enhanced facilities and capabilities, for the NRC, under interagency agreements between NRC and DOE; and

- (D) Services in support of the program of Oak Ridge Operations when the work involved has been determined by DOE to be within the unique capabilities of the Contractor or when the work involved has been determined by DOE to be within the special scientific and technical capabilities of the Contractor and the urgent need for the services precludes acquiring them from another source.
 - (ii) DOE has granted a class waiver of the Government's rights in inventions arising from the use of DOE Government-owned, Contractor-operated facilities and facility Contractors by and for third-party sponsors under cost-reimbursement arrangements which are authorized under this paragraph (A) above. The work performed by the Contractor for third-party sponsors shall be pursuant to a DOE-approved Work for Others Agreement or other agreements as approved by DOE which the parties agree shall take precedence over the articles entitled "PATENT RIGHTS - PROFIT-MAKING MANAGEMENT AND OPERATING CONTRACTORS WITH TECHNOLOGY TRANSFER AUTHORITY" and "RIGHTS DATA - TECHNOLOGY TRANSFER ACTIVITIES" of this contract.
- (3) Other Provisions
- (i) A competent full-time supervising representative of the Contractor, approved by DOE, shall be in direct charge of the work and services covered by this contract. All notices, instructions, and directions which DOE may give to the Contractor may be directed to such representative and shall constitute notice to the Contractor thereof.
 - (ii) In carrying out the work under this contract, the Contractor shall, subject to the general control of DOE, do all things necessary in the best judgment of the Contractor in the management, operation, and maintenance of the sites; provided that, whenever approval or other action by DOE is required with respect to any expenditure or commitment by the Contractor under the terms of this contract, the Government shall not be responsible unless and until such approval or action is obtained or taken.
 - (iii) In carrying out the work under this contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged and to be engaged by the Contractor in the work hereunder and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of DOE or the Government; provided that nothing herein shall require the establishment of an employer employee relationship between the Contractor and consultants and others whose services are utilized by the Contractor for the work hereunder.
 - (iv) The Contractor shall exert its best efforts to acquire for the Government such materials, supplies, services, equipment, and facilities required in connection with the work under this contract, as are not furnished by the Government. Subject to the article of this contract entitled "ORGANIZATIONAL CONFLICTS OF INTEREST," the Contractor shall be free (but shall not be obligated) to furnish items of such materials, supplies, equipment, and facilities of its own manufacture (or of the manufacture of its subsidiary corporations), provided it advises DOE in advance as to the respective prices and conditions connected with such furnishing and provided, further, that DOE acquiesces therein.

- (v) The Contractor shall provide for necessary repairs, alterations, additions, or improvements to the buildings and facilities of the plants to the extent such work is included in programs approved in writing by DOE. Projects which, under applicable procedures adopted by DOE, require the issuance of a directive therefor by the Manager of DOE's Oak Ridge Operations Office or his designee shall not be undertaken until such directive has been issued.
 - (vi) The Contractor's employees normally engaged in the performance of this contract may be retained on the allowable cost payroll and used intermittently by the Contractor on work other than in the performance of this contract; provided, however, that during the period of such intermittent use, including time spent in traveling to and from the site of such work, the employees shall not be deemed to be performing work, under this contract, and insurance coverage of the Contractor, the premiums or costs of which are allowable costs under this contract (including Workmen's Compensation, employer's liability and public liability insurance), shall not be applicable or used to defend against or pay any liability of the Contractor to such employees (or persons claiming through them) or to other persons. With respect to such intermittent services, the Contractor shall credit to the account of the Government, as provided in the article entitled "PAYMENTS AND ADVANCES," or as otherwise directed by DOE, the amounts paid by the Contractor to the employees or other persons, or contributed to any benefit plans for such employees, from Government funds, which relate to such employees' work for the Contractor not in the performance of this contract. Said amount or amounts shall include, but not be limited to, travel, per diem, and surviving spouse payments, if any, and the actual salaries and wages of the persons performing such services plus a percentage factor of such salaries and wages in lieu of direct payment for payroll taxes and benefits as set forth in Appendix A, Personnel Costs and Related Expenses, to this contract. The aforementioned factor shall be established for each ensuing year as mutually agreed between the Contracting Officer and the Contractor.
- (4) Work Breakdown Structure. The clause entitled "BUSINESS MANAGEMENT SYSTEM" requires that work under this contract be planned, budgeted, and executed using a business management system which defines activities and cost performance at an appropriate level. The clause entitled "WORK AUTHORIZATION SYSTEM" provides that DOE approval of the program proposals and budget estimates will be reflected in the work authorization and financial plans developed, issued, and revised in accordance with DOE requirements. Attached to this Section C is level 2 of the "Work Breakdown Structure."

PART I - THE SCHEDULE

SECTION F - DELIVERIES OR PERFORMANCE

F. 1 TERM OF CONTRACT (APR 1984)

Unless sooner terminated in accordance with the provisions of this clause, or the clause entitled "TERMINATION," this contract shall continue through March 31, 2000.

F. 2 PRINCIPAL PLACE OF PERFORMANCE (APR 1984)

The principal place of performance under this contract is described in clause C.1, "STATEMENT OF WORK."

F. 3 OPTION TO EXTEND THE TERM OF THE CONTACT (MAR 1989)

The Government may extend the term of this contract for up to an additional one (1) year by written notice to the Contractor at any time prior to the expiration of the contract; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 90 days before the contract expires. The preliminary notice does not commit the Government to an extension.

PART I - THE SCHEDULE

SECTION G - CONTRACT ADMINISTRATION DATA

G. 1 DESIGNATION OF PATENT ADVISOR (JAN 1994)

The Patent Counsel, Office of Intellectual Property Counsel and Technology Transfer, DOE, Post Office Box 2001, Oak Ridge, TN, 37831-8751, is hereby designated to represent the Contracting Officer in administering the patents provisions in this contract. Correspondence with respect to these provisions shall be directed to the Patent Counsel, with a copy to the Contracting Officer.

G. 2 CONTRACTING OFFICER'S REPRESENTATIVES (MAR 1989)

The Contracting Officer's Representatives (CORs) will be designated by separate letter and will represent the Contracting Officer in the technical phases of the work. The CORs are not authorized to change any of the terms and conditions of this contract. Changes in the Scope of Work will be made only by the Contracting Officer by properly written modification(s) to the contract. Additional Contracting Officer's Representative(s) for other purposes as required may be designated in writing by the Contracting Officer.

G. 3 CONTRACT ADMINISTRATION (MAR 1989)

The contract will be administered by:

U. S. Department of Energy
Oak Ridge Operations
Procurement and Contracts Division
ATTN: Contracting Officer
Post Office Box 2001
Oak Ridge, Tennessee 37831-8756

Written communication shall make reference to the contract number and shall be mailed to the above address.

PART I - THE SCHEDULE

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H. 1 TECHNOLOGY TRANSFER MISSION (JUN 1995) - Deleted (Replaced by DEAR 970.5204-40)

H. 2 PRE-EXISTING CONDITIONS (OCT 1995)

The Government shall indemnify, protect, and hold the Contractor harmless from and against any and all civil liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses, and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever which may be incurred by, imposed on, or asserted against the Contractor in any way relating to or arising out of any act or failure to act on the part of any person, and relating to any part of the facility at the sites managed under this contract or any areas adjacent thereto which act or failure to act occurred before the Contractor assumed responsibility for sites managed under this contract.

New conditions created or caused by the Contractor and coming into being after January 1, 1996, are not considered "Pre-existing conditions." To the extent the acts or omissions of the Contractor acting after January 1, 1996, cause or add to any fine or penalty resulting from a pre-existing condition, (i.e., one in existence prior to January 1, 1996), the Contractor will be responsible in accordance with the terms and conditions applicable to this contract beginning January 1, 1996.

The provisions of this clause are subject to the availability of funds appropriated by Congress. The Government shall use its best efforts to obtain such funds should such funds not be otherwise available.

H. 3 DIVERSITY (OCT 1995)

The Contractor shall develop and implement a plan for the accomplishment of DOE requirements regarding diversity. This Diversity Plan shall be submitted to the Contracting Officer for review and approval not later than March 31, 1996. The plan shall address, at a minimum, the Contractor's approach for obtaining diversity in the areas of (1) work force, (2) educational outreach, (3) community involvement and outreach, and (4) economic development (including technology transfer).

H. 4 COST SAVINGS PROGRAM (JUN 1995)

It is the DOE's intent to have its facilities and laboratories operated in the most efficient and effective manner possible. To this end the Contractor shall, in the performance of this contract, assess its operations and identify ways to make them more cost effective without adversely affecting the level of performance required by the contract. It is recognized by both parties that one program will be utilized to measure and report all cost savings. The Contractor will, in good faith, strive to maintain the highest level of cost effectiveness and measure and report savings under this program.

H. 5 M&O MAKE OR BUY PLAN (JUN 1995)

(a) Definitions

"Buy item" means a work activity or property or services to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the Contractor.

"Make item" means a work activity or property or services to be produced or performed by the Contractor using its personnel and other resources at the DOE facility or site.

"Master make-or-buy plan" means a Contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items."

(b) Make-or-buy plan. The Contractor shall initiate and maintain a make-or-buy plan that establishes a preference for providing property and services on a least cost basis, subject to specific DOE make or buy criteria identified in the schedule or otherwise provided by the Contracting Officer.

(c) Submission and approval. The Contractor shall submit a make-or-buy plan for approval in accordance with the schedule and other instructions provided by the Contracting Officer. The following documentation shall be prepared and submitted:

- (1) a description of the each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;
- (2) the categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make" when (1) the Contractor is not the least-cost performer, and (2) a program specific make-or-buy criteria does not otherwise justify a "must make" categorization, a cost/benefit analysis must be performed for each item;
- (3) a decision to either "make" or "buy" in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as "can make or buy";
- (4) identification of potential suppliers and subcontractors, if known, and their location and size status;
- (5) a recommendation to defer a make or buy decisions where categorization of an identifiable work effort(s) is impracticable at the time of initial development of the plan;
- (6) the impact of a change in current practice of making or buying on the existing workforce; and
- (7) any additional information appropriate to support and explain the plan.

(d) Conduct of operations. Once a master make or buy plan is approved, the Contractor shall perform in accordance with the plan.

- (e) Changes to the master make-or-buy plan. The master make-or-buy plan established in accordance with paragraph (b), above shall remain in effect for the term of the contract, unless: (1) a lesser period is provided either for the total plan or for individual items or work effort; or (2) the circumstances supporting the original make-or-buy decisions change subsequent to the initial approval; or (3) new work is identified. At least annually, the Contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. All changes shall be submitted in accordance with instructions provided by the Contracting Officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the Contractor's receipt of the Contracting Officer's written approval.

H. 6 PRIVACY ACT SYSTEMS OF RECORD (JUN 1995)

- (a) The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function to which the requirements of The Privacy Act, 5 U.S.C. 552(a), are deemed applicable:

<u>DOE SYSTEM NUMBER</u>	<u>TITLE</u>
5	Personnel Records of Former Contractor Employees
33	Personnel Medical Records
35	Personnel Radiation Exposure Records

The Contractor shall perform this requirement in accordance with the clause of this contract entitled "PRIVACY ACT." It is understood that compliance with the Privacy Act will require certain changes to the Contractor's current record keeping procedures. DOE and the Contractor agree that an employee whose employer changes from Lockheed Martin Energy Systems to the Contractor, or vice-versa, shall not be considered a "Former Contractor Employee" under DOE System 5 above.

- (b) If DOE requires the Contractor to design, develop, or maintain additional systems of Government-owned records on individuals to accomplish an agency function, the Contracting Officer, or designee, shall so notify the Contractor in writing and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

H. 7 GUARANTEE OF PERFORMANCE (APR 1984)

In view of the fact that the Contractor has been organized by Lockheed Martin Corporation for the sole purpose of performing the work hereunder, and in view of the fact that Lockheed Martin Corporation owns all the stock of the Contractor, this contract shall be subject to the execution of a guarantee of performance by Lockheed Martin Corporation in such form as shall be satisfactory to DOE, and this contract shall not be binding unless such guarantee is duly executed.

H. 8 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (JUL 1995)

- (a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "COST ACCOUNTING STANDARDS," and "ADMINISTRATION OF COST ACCOUNTING STANDARDS," if its failure to comply with the clauses is caused by the Contractor's compliance with DOE accounting practices and procedures.
- (b) The Contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses entitled, "COST ACCOUNTING STANDARDS," and "ADMINISTRATION OF COST ACCOUNTING STANDARDS," if: (1) the Contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and (2) the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

H. 9 ADVANCE UNDERSTANDING ON ALLOWABLE COSTS - HOME OFFICE EXPENSE (FEB 1992)

- (a) Pursuant to the article entitled "ALLOWABLE COSTS AND FEE," the parties have agreed that the following services, directly attributable to the performance of this contract, are allowable costs.
 - (1) Support from the Lockheed Martin Corporation (LMC) Home Office consisting of the following:
 - (i) Analysis and monitoring of employee benefits
 - (ii) Union negotiations and personnel support
 - (iii) Legal and/or labor contract support
 - (iv) Financial and tax accounting support
 - (v) Internal audit
 - (vi) Purchasing/national agreements
 - (vii) Corporate Environmental Support
 - (viii) Other functions as specifically approved in advance by the Contracting Officer
 - (2) Meetings of the Contractor's Board of Directors for the purpose of assessing management and performance under this contract and providing management guidance and assistance.
- (b) The Contractor shall charge to the account of the Government as provided in the article entitled "PAYMENTS AND ADVANCES," or as otherwise directed by DOE, the amounts claimed for the above support services. Such amounts will be charged and accounted for as follows:
 - (1) Corporate Services Provided at ORNL or Other Corporate Off-site Locations - Costs will include but not be limited to travel, per diem, and other out-of-pocket costs, plus the actual salaries of the persons performing such services plus a percentage factor of salaries to cover fringe benefits and payroll taxes. The percentage factor will be applied in accordance with the disclosure statement issued by Lockheed Martin Corporation pursuant to the Cost Accounting Standards. Any such costs will be against a specific Contractor-issued order or Intercompany/Interdivisional Operations Directive (IDOD) for such services as applicable. The Contractor may issue such orders or IDODs within the total budget limitation approved by the Contracting Officer for this

category of support. The Contractor shall provide periodic reports of costs incurred as required by the Contracting Officer.

- (2) Board of Directors - Lockheed Martin Energy Research Corporation (LMER) Board of Directors meeting will be charged on a predetermined, fixed-rate basis depending on the location of such meetings. Separate rates will apply to those held at locations convenient to DOE ORO contract facilities and those held at Bethesda, Maryland. Such rates and the applicable fiscal year (FY) budget will be submitted to the Contracting Officer for prior approval.
- (3) Corporate Services Provided from the Home Office Location - Costs will include an estimate of the hours of home office labor support provided by the various LMC departments at an average hourly rate, which includes salaries and indirect costs, as determined by the Corporate Director of Finance. All such costs will be charged against a Contractor-issued general IDOD covering the FY in question. Such IDOD shall not exceed the amount approved in advance by the Contracting Officer without specific written approval and will contain a budget estimate of all such anticipated FY costs. While said budget limitation will not be exceeded without prior DOE-approval, amounts may be invoiced to LMER on a monthly prorated basis pending any Contracting Officer-approved budget adjustment. Prior to establishment and issuance of an IDOD for an ensuing FY, the Contractor will provide the Contracting Officer with a separate estimate of hours and resulting costs to be charged against the contract for such ensuing FY.

H.10 FINANCIAL MANAGEMENT SYSTEM (JUN 1995)

The Contractor shall maintain and administer a financial management system that includes the existing integrated accounting system and (1) is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this contract, expenditures costs, and encumbrances; (2) permits the preparation of accounts and accurate, reliable financial and statistical reports; and (3) assures that accountability for the assets can be maintained. The Contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of a substantial deviation from this plan and, as requested by the Contracting Officer, shall submit any such deviation to DOE for written approval before implementation.

H.11 INTEGRATED ACCOUNTING (JUN 1995)

Integrated accounting procedures are required for use under this contract. The Contractor's financial management system shall include an integrated accounting system which is linked to DOE's accounts through the use of reciprocal accounts and which has electronic capability to transmit monthly and year-end self-balancing trial balances to the DOE's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the Contracting Officer pursuant to the clause entitled "DOE DIRECTIVES."

H.12 WORK AUTHORIZATION SYSTEM (DEC 1995)

- (a) The Contractor and DOE shall mutually establish an Annual Cost Estimate consistent with the Statement of Work; corresponding work breakdown structure specified in Section C, or other level specified by the Contracting Officer; and the clause entitled "BUSINESS MANAGEMENT SYSTEM."

The Annual Cost Estimate will be developed, in conjunction with customers, prior to the start of the fiscal year or as early in the fiscal year as possible. In addition, the Annual Cost Estimate will be updated at least twice a year, prior to May 15th and prior to August 15th of each year. The updated estimate will reflect actual work authorized in addition to planning for the balance of the year. The Annual Cost Estimate will be incorporated into Appendix G of the contract.

- (b) DOE approval of the program proposals and budget estimates will be reflected in work authorizations and financial plans developed, issued, and revised in accordance with DOE requirements.
- (c) Order of precedence. This clause is of lesser order of precedence than the contract clauses entitled "ALLOWABLE COSTS AND FEE," "OBLIGATION OF FUNDS," and "PAYMENTS AND ADVANCES."

H.13 SUBCONTRACT CLAUSES (JUN 1995)

- (a) The Service Contract Act of 1965 (P. L. 89-286) is not applicable to contracts for the operation of DOE facilities. It is however, applicable to subcontracts awarded by contractors operating DOE facilities. The Contractor shall insert in all subcontracts of the character to which the Service Contract Act, as amended, applies the applicable clause specified in FAR 22.1005 or FAR 22.1006 with such modifications as appropriate to reflect the Contractor/subcontractor relationship.
- (b) The Contractor shall insert as necessary a contract clause entitled "REQUIRED BONDS AND INSURANCE - EXCLUSIVE OF GOVERNMENT PROPERTY" that will impose, as appropriate, statutory and other applicable bonding requirements on its subcontractors and require its inclusion, as needed, in any lower tier subcontracts.

H.14 OVERSIGHT RESPONSIBILITY (SEP 1992)

- (a) The parties recognize that the Contractor is charged with oversight responsibility in accordance with this clause regarding health, safety, environmental law compliance, quality assurance, and compliance with security and safeguard standards for all sites under this contract and all activities on those sites or performed for those sites. The Contractor's performance of the activities described in this clause constitutes oversight by the Contractor. The parties also recognize that DOE has awarded or will award prime contracts for various activities at the sites identified in Section C, Statement of Work. Such DOE prime contracts are hereinafter referred to as "DOE prime contract(s)" or "DOE prime contractor(s)," as appropriate in the context of the sentence. DOE prime contractors will be responsible for complying with applicable laws, regulations, DOE orders and directions, and with the standards and procedures of the Contractor that have been identified to DOE, as they apply to the DOE prime contractor's activities, with respect to health, safety, environmental, quality assurance, and safeguard and security matters. The Contractor is not responsible for identifying all laws, regulations, and DOE orders which are applicable

to other DOE prime contracts or to subcontracts. The Contractor is responsible for identifying to DOE the Contractor's standards and procedures applicable to the work. DOE will include language in the specific DOE prime contracts which obligates the DOE prime contractors and their subcontractors to comply with the provision of this clause, to interface with the Contractor, and to comply with applicable laws, regulations, orders, and the Contractor's standards and procedures identified to DOE that are applicable to a DOE prime contractor's work scope. As a part of the identification process to DOE, the Contractor will provide copies of its standards and procedures.

- (b) (1) With the frequency and to the extent considered appropriate by the Contractor in its discretion, the Contractor will observe or evaluate the onsite practices of any DOE prime contractor to form an opinion as to the extent to which such practices comply with applicable requirements described in (a) above. To the extent that the Contractor considers any records, data, or information of the DOE prime contractor relevant to such observation or evaluation, it will be granted access to such, consistent with the Privacy Act. If the Contractor and a DOE prime contractor disagree as to the relevancy of particular records, data, or information, DOE shall resolve the disagreement.
 - (2) If the Contractor finds a deficiency as a result of (1), it is authorized to:
 - (i) suspend work of the DOE prime contractor or subcontractor if the Contractor deems the deficiency of such severity that human life or the environment is endangered, or that Government property is threatened when such property is classified material, is part of classified production, or is otherwise critical to a process planned or being performed at a facility;
 - (ii) advise the DOE prime contractor of the deficiency and request corrective action;
 - (iii) recommend that the DOE direct the DOE prime contractor and/or subcontractor to take corrective actions in situations where the DOE prime contractor or subcontractor has repeatedly failed to correct occupational, safety, or health infractions;
 - (iv) with respect to security matters, deny access to the site by the DOE prime contractor, subcontractor, or any employees thereof;
 - (v) with respect to other matters, recommend that DOE deny access to the site by the DOE prime contractor, subcontractor, or any employee thereof;
 - (3) With regard to (2)(i) above, the Contractor will notify its Contracting Officer or his representative of its intended action if, in its judgment, it has sufficient time; otherwise, notification will be as soon as reasonable after the action is taken.
- (c) The Contractor's oversight of the facilities it manages and operates for DOE is not intended to reduce the obligations, responsibility, and/or accountability to DOE or any regulatory agency, including judicial body, responsible for audit, licensing, permitting, or other administrative reviews or adjudication capacity, of the DOE prime contractors and subcontractors for compliance with laws, regulations, DOE orders and directions, or contract provisions nor to impose any responsibility or accountability on the Contractor for the failure of the DOE prime contractors or subcontractors to meet their obligations. Absent willful misconduct or lack of good faith on the part of the Contractor's officers, directors or supervising representative, the Contractor shall not be liable for claims for increased costs or other

claims by DOE prime contractors or subcontractors resulting from compliance with the Contractor's oversight. Nothing herein is intended to confer any rights under this clause in any party not a party to this contract.

DEAR 970.5204-78 LAWS, REGULATIONS, AND DOE DIRECTIVES. (JUNE 1997)

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- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
 - (b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (c) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule associated with the revision of List B pursuant to the clause entitled, Changes, of this contract.
 - (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under 48 CFR (DEAR) 970.5204-2. When such a process is used, the set of tailored ES&H requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
 - (d) The contractor is responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. The contractor is responsible for flowing down the necessary provisions to subcontracts at any tier to which the contractor determines such requirements apply.

H.16 LEGAL ASSISTANCE TO SECURITY AND FIRE-FIGHTING EMPLOYEES (JUN 1995)

- (a) During the performance of any and all phases of the work under this contract, the Contractor shall maintain security and fire-fighting forces to the extent required by DOE. Physically fit security tactical response teams highly trained in offensive and defensive tactics will be required at facilities designated by DOE. Such teams will be used to respond to situations where lives, weapons components, special materials, or Government property are jeopardized by outside or internal threats.
- (b) It is Government policy to allow the Contractor to defend any of its security and fire-fighting force employees if a claim or civil or criminal action results from the employee's conduct which was undertaken in good faith for the purpose of accomplishing and fulfilling the employee's official duties. The Contractor shall provide legal counsel and pay all reasonable counsel fees and incidental costs and expenses (including any premium for bail bond) which may be necessary to defend adequately any member of said security or fire-fighting force against whom a claim or civil or criminal action is brought and shall pay any judgments or any other financial liability resulting from such claim or civil or criminal action and all such costs are allowable, subject to the restrictions of the Major Fraud Act as implemented by the clause entitled, "COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS." If a criminal conviction is obtained, the costs of defending the criminal proceeding and any ensuing criminal fines or penalties are unallowable. Defense of security and fire-fighting employees shall be governed by the Contractor's approved Litigation Management Procedures.

H.17 ENGINEERING SERVICES (JUN 1995)

- (a) With respect to DOE prime contractors, the Contractor is to inspect the construction workmanship, materials, and equipment of such contractors and their subcontractors at any stage of completion and to act as the Title III Representative of DOE for any task, project, or modification, except for those specific Title III activities which have been assigned to another DOE contractor, relative to compliance with the plans and specifications and that the quality of materials and workmanship is consistent with the requirements of the task, project, or modification.
- (b) With respect to architect-engineer prime contractors, the Contractor is authorized to evaluate and provide technical approval of design, sequencing of work with the Contractor, and scheduling of plant and operating interfaces. The Contractor is authorized to have access to all records, information, data, and sites it deems relevant to this function, consistent with the Privacy Act.
- (c) The Contractor's performance of the activities described in this clause constitute engineering services by the Contractor. The Contractor's engineering services performed at the facilities it manages and operates for DOE is not intended to reduce obligations, responsibility, and/or accountability to DOE or any regulator agency, including judicial body, responsible for audit, licensing, permitting, or other administrative reviews or adjudication capacity, of the DOE prime contractors and subcontractors for compliance with laws, regulations, DOE orders and directions, or contract provisions nor to impose any responsibility or accountability on the Contractor for the failure of the DOE prime contractors or subcontracts to meet their obligations. Absent willful misconduct or lack of good faith on the part of the Contractor's officers, directors or supervising representative, the Contractor shall not be liable for claims for increased costs or other claims by DOE prime contractors or subcontractors resulting from compliance with the Contractor's engineering services. Nothing herein is intended to confer any rights under this clause in any party not a party to this contract.

H.18 BUSINESS MANAGEMENT SYSTEM (DEC 1995)

- (a) It is the DOE's intent that all work be planned, budgeted and executed using a business management system that is consistent with a best management practice approach. To this end, the Contractor shall establish and use business management systems that define activities at an appropriate level and that provide the corresponding planned and actual work and cost performance data. Work will be authorized in accordance with the clause entitled "WORK AUTHORIZATION SYSTEM."
- (b) It is agreed by both parties, that the Contractor shall implement an appropriate business management system on a selected basis during the period April 1, 1996, to September 30, 1996. The Contractor shall provide on July 1, 1996, a detailed description of the methodologies and systems that comprise the business management system that will be fully implemented.
- (c) Beginning October 1, 1996, the Contractor will fully implement the business management system described in the system description. In October 1997, the Government shall conduct a validation of the business management system to determine compliance with the system description and effectiveness of the system.
- (d) The Contracting Officer will be informed as to changes made in the methodologies or systems that would result in the need to revise the system description.
- (e) The methodologies and systems that comprise the business management system shall be compatible with the Cost Accounting Standards, to the extent that they are applicable to this contract.

H.19 TECHNICAL DIRECTION (MAR 1989)

- (a) Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer's Representatives (CORs). The term "technical direction" is defined to include, but is not limited to:
 - (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
 - (1) constitutes an assignment of additional work outside the Statement of Work;
 - (2) constitutes a change as defined in the contract clause entitled "CHANGES";

- (3) in any manner causes an increase or decrease in the total estimated contract cost, the fee, 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 his authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within thirty (30) 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 either:
- (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 in writing 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."

H.20 CONTRACTOR COMMITMENTS (OCT 1995)

- (a) In addition to those commitments that are addressed in other provisions of the contract, the Contractor commits to make a good faith effort, consistent with available funding under the contract, except where the Contractor has committed to use corporate funds, to meet or exceed each of the commitments listed below. The Contractor's ability to achieve these commitments may be used by DOE in any extend/compete determination.
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- (1) Establish a Diversity Program which utilizes the resources of ORNL to realize the benefits of diversity in all forms.
 - (2) Continue efforts to increase utilization of ORNL user facilities by the private sector.
 - (3) Institute a make-buy decision model across ORNL and complete make-buy decision analyses for five functional core businesses by April 1, 1996.
 - (4) Support LMES in the reduction of procurement cycle times for purchases of ORNL items.
 - (5) Institute selected application of the Malcolm Baldrige criteria throughout ORNL.

- (6) Implement a cost savings initiative consistent with the DOE strategic realignment program.
- (7) Identify projects and programs to increase opportunities for 8(a) contractors, and small, small-disadvantaged, and women-owned businesses.
- (8) Make significant progress toward achieving DOE Voluntary Protection Program "STAR" status by 1998. The first major milestone, to conduct a self-assessment against the VPP application to identify activities currently underway which meet the elements of VPP and to identify areas of weakness which need to be addressed in order to be recognized for inclusion in the DOE-VPP, will be accomplished by the end of fiscal year 97.

 (b) The Contractor shall provide to the Contracting Officer, on a periodic basis of at least annually, a report addressing the Contractor's progress toward these commitments, to the extent they are not addressed through other established reporting means.

H.21 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS (JUN 1995)

(a) DEFINITIONS.

(1) ADVERSE DETERMINATION means

- (i) A judgment of liability against the Contractor and in favor of the employee in an employee action in a judicial forum;
- (ii) A recommended decision under 29 C.F.R. Part 24.6(b) by an Administrative Law Judge that the Contractor has violated the employee provisions of the statutes or executive orders for which the Secretary of Labor has been assigned enforcement responsibility;
- (iii) A initial agency decision, under 10 C.F.R. 708.10, that the Contractor has engaged in conduct prohibited by 10 C.F.R. 708.5; and
- (iv) Any decision against the Contractor by the head of an executive agency under §6006 of the Federal Acquisition Streamlining Act, Pub. L. 103-355 (adding section 315 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 241 [251], et. seq.), see paragraph (c));

(2) RETALIATORY OR DISCRIMINATORY ACTS mean(s) discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation or other similar negative action taken against an employee by a Contractor after the effective date of this modification, as a result of activities protected by the statutes enumerated in 29 C.F.R. 24.1(a) or as a result of the employee's disclosure of information, participation in a proceeding or refusal to engage in illegal or dangerous activities as set forth in 10 C.F.R. 708.5(a).

(3) EMPLOYEE ACTION means an action filed in Federal or state court for redress of retaliatory or discriminatory action by a Contractor, any administrative procedure brought by an employee or federal agency under 29 C.F.R. Part 24, or 10 C.F.R. part 708, as appropriate, or any other complaint filed against the Contractor for retaliatory or discriminatory acts under 10 C.F.R. Part

708 by an employee of any other Contractor or subcontractor which is cognizable under 10 C.F.R. 708.

- (4) LITIGATION COSTS include legal services, whether performed by in house or outside counsel; administrative, technical and clerical services; costs of services of consultants and experts retained by the Contractor to assist it, but exclude the costs of settlements and judgments.
- (b) Subsequent to an adverse determination, all litigation costs incurred in the investigation and/or defense of an employee action under this clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. Subsequent to an adverse determination, such costs, as well as costs associated with any interim relief which may be granted, may not be paid from the advance funding provided pursuant to this Contract, whether that funding be in the form of a special bank account or a letter of credit. Notwithstanding the foregoing, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs incurred subsequent to an adverse determination, as well as any interim relief cost, plus interest, unless there is a final determination that the Contractor is not liable for any retaliatory or discriminatory acts. The allowance of such costs, notwithstanding any other provision of the Contract, will be determined in accordance with this clause.
- (c) Litigation costs and settlement costs incurred in connection with the defense of, or a settlement of, an employee action are allowable if incurred by the Contractor before any adverse determination of the employee's claim, if approved as just and reasonable by the Contracting Officer and otherwise allowable under the Contract. Costs incurred in pursuit of mediation or other form of alternative dispute resolution are allowable if incurred by the Contractor before any adverse determination of the employee's claim, if approved as just and reasonable by the Contracting Officer and otherwise allowable under the Contract. Additionally, the Contracting Officer may, in appropriate circumstances, reimburse the Contractor for litigation costs and costs of judgments and/or settlements which in the aggregate, do not exceed up to the amount of the prior settlement offer approved by the Contracting Officer and rejected by the employee.
- (d) Except as provided in (c) above and (e) and (f) below, any other costs associated with an employee action, including litigation costs connected with a judgment resulting from or settlement subsequent to, an employee action, are not allowable unless the Contractor receives a judgment or final determination favorable to the Contractor. In such event, reasonable litigation costs incurred by the Contractor are allowable and the Contractor may submit a request for reimbursement for all such costs incurred subsequent to the adverse determination.
- (e) Costs incurred by the Contractor as a result of an employee action for retaliatory or discriminatory acts that resulted from compliance with either:
 - (1) specific terms and conditions of the Contract, or
 - (2) written instructions from the Contracting Officer shall be allowable.
- (f) Reasonable litigation costs and settlement costs incurred by, and judgments entered by the Office of Hearings and Appeals against the Contractor as a result of an employee action for discrimination under 10 C.F.R. Part 708 are allowable where the Office of Contractor Employee Protection has issued a

Report of Investigation including a proposed disposition denying the relief being sought by the employee and the employee requests a hearing by the Office of Hearings and Appeals.

- (g) The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under paragraph (f), of the clause of this contract entitled "COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS".

H.22 DEAR 970.5204-AL 92-84 OWNERSHIP OF RECORDS (NOV 1992)

- (a) Government's Records. Except as is provided in paragraph (b) of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be 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 the contract.
- (b) Contractor's Own Records. The following records are considered the property of the Contractor and are not within the scope of paragraph (a) above.
 - (1) Personnel files (excluding personnel radiation exposure records) maintained on individual employees, applicants, and former employees;
 - (2) Worker's compensation files;
 - (3) Psychological/psychiatric treatment records and files maintained on individual employees, applicants, and former employees of the Contractor;
 - (4) Employee relations records and files such as records and files pertaining to:
 - (i) Qualifications or suitability for employment of any employee, applicant or former employee,
 - (ii) Internal complaints, grievance records,
 - (iii) Arbitration proceedings pursuant to the provisions of any labor contract,
 - (iv) Allegations, investigations and resolution of employee misconduct,
 - (v) Employee discipline,
 - (vi) Employee charges of discrimination,
 - (vii) Negotiation with any labor organization in connection with any labor contract,
 - (viii) Affirmative action plans and related records which remain in the custody and control of the Contractor,

- (5) Records and files pertaining to wages, salaries and benefits and wage and salary benefit administration;
- (6) Privileged or confidential Contractor financial information and correspondence between the Contractor, its financial institutions or other business segments of Contractor or its parent corporations, but excluding records required for audit under the clause entitled "ACCOUNTS, RECORDS, AND INSPECTION."
- (7) Internal legal files or documents containing attorney-client privileged materials or attorney work-product and which may be otherwise exempt from disclosure under FOIA, but not including such files and documents relating to litigation and other actions allowable under the clause entitled "INSURANCE - LITIGATION AND CLAIMS";
- (8) Files involving litigation by or against the Contractor with respect to which the costs are unallowable.
- (9) Records related to:
 - (i) Procurement actions by the Contractor;
 - (ii) Procurements of proprietary software limiting the Contractor's use, copying and disclosure of the vendor's software and associated object code and documentation (e.g., manuals, etc.);
- (10) Drug testing records;
- (11) Executed license agreements, including Exhibit B (Royalties); Exhibit C (Commercialization Plan); and all related documents, notes, and correspondence related to Exhibits B and C;
- (12) Contractor's Protected CRADA Information and CRADA Appendices containing licensing terms and conditions; and,
- (13) Patent, copyright, mask work, and trademark application files and related Contractor invention disclosures, and documents and correspondence where the Contractor has elected rights or has permission to assert rights and has not relinquished such rights to or turned such rights over to the Government.

In the event of completion or termination of this Contract, copies of any such Contractor's own records shall be, unless prohibited by law, delivered to DOE or its designees upon request.

- (c) **Inspection, Copying, and Audit of Records.** All records acquired or generated by the Contractor under this Contract in the possession of the Contractor, including those described in paragraph (b) above, shall be subject to inspection, copying (exclusive of (b)(6), (b)(7), (b)(8), and (b)(9)(ii)), and audit by DOE or its duly authorized representative at all reasonable times. The Contractor shall afford DOE or its duly authorized representative reasonable facilities for such inspection, copying (exclusive of (b)(6), (b)(7), (b)(8), and (b)(9)(ii)), and audit, provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. Any use or publication of contractor-owned records under this section shall be consistent with applicable federal law, including the Privacy Act (see the clause herein implementing FAR 52.224-2 relating to Privacy Act records maintained by the contractors) and the Intellectual

Property and Technology Transfer clauses of this Contract and any contractor agreements pursuant thereto.

- (d) **Applicability.** The provisions of paragraphs (b) and (c) of this clause apply to all records described therein without regard to the date or origination of any such record.
- (e) **Records Retention Standards.** Special records retention standards, incorporated into the contract by the clause entitled "DOE DIRECTIVES" are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor.
- (f) **Flowdown.** The Contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors are present:
 - (1) The value of the subcontract is greater than \$2 million, (unless specifically waived by the Contracting Officer);
 - (2) The Contracting Officer determines that the subcontract is, or involves, a critical task related to the contract; or,
 - (3) The subcontract includes any of the following, or similar, clauses:

"ENVIRONMENT, SAFETY AND HEALTH (GOVERNMENT-OWNED OR LEASED FACILITIES),"

"NUCLEAR FACILITY SAFETY,"

"PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS."

H.23 WORK FOR OTHERS FUNDING AUTHORIZATION (JUL 1995)

The Contractor is permitted to provide advance payment utilizing Contractor funds for reimbursable work to be performed by the Contractor for non-federal entities in instances where advance payment for that entity is required pursuant to DOE policy and such advance cannot be obtained. The Contractor is also permitted to advance continuation funding utilizing Contractor funds for federal entities when the term, or the funds on a federal interagency agreement have elapsed. Any uncollectible receivables resulting from the Contractor utilizing its own funding shall be the responsibility of the Contractor and the United States Government shall not have any liability to the Contractor therefor.

H.24 CRITICAL OUTCOMES, OBJECTIVES, AND PERFORMANCE INDICATORS (DEC 1998)

The Contractor and DOE will use critical outcomes and performance objectives as a means for evaluating and improving contractor performance. Prior to the beginning of each fiscal year under this contract, DOE shall determine the performance areas in which critical outcomes and performance objectives will be developed. The Contractor and DOE shall mutually agree on the critical outcomes and performance objectives to be applied to each performance area and how the critical outcomes and performance objectives will be calculated or evaluated. The performance areas and critical outcomes and performance objectives shall be incorporated into Appendix I, Critical Outcomes Plan. A Critical Outcomes Plan shall be developed which will include the details related to the definition, accumulation, calculation, and evaluation of critical outcomes and performance objectives data.

PART II - CONTRACT CLAUSES

SECTION I - CONTRACT CLAUSES

I.1 FAR 52.203-1 OFFICIALS NOT TO BENEFIT (APR 1984) - Deleted

I.2 FAR 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) above, 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.3 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (OCT 1995)

- (a) Except as provided in (b) below, 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) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

Alternate I (Oct 1995) adds (per FAR 3.503-2). For acquisition of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the



Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item (s).

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

I.4 FAR 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 any kickback. The Contracting Officer may order the 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 this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

I. 5 FAR 52.203-9 REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY - MODIFICATION (NOV 1990)

- (a) Definitions. The definitions set forth in FAR 3.104-4 are hereby incorporated in this clause.
- (b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause when requested by the Contracting Officer in connection with the execution of any modification of this contract.
- (c) Certification. As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY-MODIFICATION (NOV 1990)

(1) I, _____ (Name of certifier) am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement _____ (contract and modification number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of _____ (Name of Offeror) who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity-Modification (Continuation Sheet), ENTER NONE IF NONE EXISTS)

(Signature of the officer or employee responsible for the modification proposal and date)

(Typed name of the officer or employee responsible for the modification proposal)

* Subsections 27 (a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

- (d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the Contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.
- (e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

I.6 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1990)

- (a) The Government, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification 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 his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.
- (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 or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.
- (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. 7 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

- (a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

"Local Government," as used in this clause, means a unit of Government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a Governmental duty, including a local public authority, a special district, an intrastate district, a council of Governments, a sponsor group representative organization, and any other instrumentality of a local Government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

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

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local Government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

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

(b) Prohibitions.

- (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by own employees.
 - (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

- (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of -
 - (1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation

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

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A) (1) and (2) of this clause are permitted under this clause.
- (E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

- (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes -
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.
 - (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.
- (e) Penalties.
- (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
 - (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

I. 8 FAR 52.203-13 PROCUREMENT INTEGRITY-SERVICE CONTRACTING (SEP 1990)

- (a) Definitions. The definitions in FAR 3.104-4 are hereby incorporated in this clause.
- (b) The Contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, as a minimum -
 - (1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR to such employees; and
 - (2) Require each such employee, as a condition of serving as a procurement officials, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR, and will not engage in any conduct prohibited by subsection 27 (a), (b), (d), or (f) of the Act, as implemented in the FAR, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.
- (c) Pursuant to FAR 3.104-9(d), a Contractor employee who is serving as a procurement official may be requested to execute additional certifications.
- (d) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such procurement expected to result in a contract or contract modifications in excess of

\$100,000, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation, during the conduct of the agency procurement, not to disclose proprietary or source selection information related to such agency procurement.

I.9 FAR 52.208-1 REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS
(APR 1984)

- (a) This clause applies only if supplies furnished under this contract contain jewel bearings or related items.
- (b) "Jewel bearing," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes - olive, watch holes - straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this clause, means the Government-owned, Contractor-operated William Langer Plant, Rolla, ND 58367 (Phone: 701-477-3193).

"Price list," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"Related item," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

- (c) All jewel bearings and related items required for the supplies to be furnished under this contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.
 - (1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number shall be placed on it.
 - (2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.
 - (3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

- (d) At its option, the Plant may decline or reject all or part of a Contractor's or subcontractor's order. If the order is declined or rejected, the Contractor shall notify the contract administration office cognizant of this contract promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Contractor indebtedness to the Plant as determined by the Plant, the Contracting Officer shall evaluate the impact and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.
- (e) The Contractor agrees to insert this clause, including this paragraph (e), and the prime contract number in every subcontract unless the Contractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

I.10 FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 1992)

- (a) The Government suspends or debar contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 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 the small purchase limitation at FAR 13.000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principles, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Procurement Programs.
 - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

I.11 FAR 52.215-33 ORDER OF PRECEDENCE (JAN 1986) (DEVIATION)

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; and (e) the specifications. In the event there is a conflict in terms and provisions of this contract regarding cost, then such term or provision which addresses the cost directly and which makes the cost allowable shall take precedence over any term or provision which would appear to make such cost unallowable.

I.12 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FEB 1990)

- (a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals 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 and small business concerns owned and controlled by socially and economically disadvantaged individuals.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term small business concern owned and controlled by socially and economically disadvantaged individuals shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

I.13 FAR 52.219-9 SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (FEB 1995)

- (a) This clause does not apply to small business concerns.
- (b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

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

- (c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.
- (d) The offeror's subcontracting plan shall include the following:
 - (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
 - (2) A statement of -
 - (i) Total dollars planned to be subcontracted;
 - (ii) Total dollars planned to be subcontracted to small business concerns; and
 - (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.
 - (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to
 - (i) small business concerns and
 - (ii) small disadvantaged business concerns.
 - (4) A description of the method used to develop the subcontracting goals in (1) above.
 - (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small

Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns and (ii) small disadvantaged business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause in this contract entitled "UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.
- (10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.
- (11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small and small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
 - (i) Source lists, e.g., PASS guides and other data that identify small and small disadvantaged business concerns.
 - (ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns.
 - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B)

whether small disadvantaged business concerns were solicited and if not, why not, and (C) if applicable, the reason award was not made to a small business concern.

- (iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small and small disadvantaged business sources.
 - (v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the programs's requirements.
 - (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.
 - (4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small business or small disadvantaged business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- (f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided, (1) the master plan has been approved, (2) the offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

- (2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.
- (3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
- (i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS," or (2) an approved plan required by this clause, shall be a material breach of the contract.

I.14 FAR 52.219-13 UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES (AUG 1986)

- (a) "Women-owned businesses," as used in this clause, means small business concerns that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

"Small business concern," as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

- (b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.
- (c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.
- (d) The Contractor may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

I.15 FAR 52.219-16 LIQUIDATED DAMAGES-SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1989) (DEVIATION)

- (a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN," or willful or intentional action to frustrate the plan.
- (b)
 - (1) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "SMALL AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLANS," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.
 - (2) (DEVIATION) If within 15 working days after the end of each quarter of the fiscal year the Contractor does not receive a written determination that it has failed to make a good faith effort to meet its subcontracting goal, the efforts of the Contractor will have been finally determined to have met the applicable standard for that quarter.
 - (3) (DEVIATION) If within 15 working days after the end of the first, second, or third quarter, the Contractor receives a written adverse determination specifying the deficiencies in failing to make good faith efforts the final decision of the Contracting Officer regarding that quarter will be withheld. The Contractor will be given up to the number of quarters remaining in that fiscal year in which to bring its overall performance for a period which includes the unsatisfactory quarter up to the level of good faith efforts to meet its subcontracting goal. If within 15 working days of the end of any such additional quarter the Contractor does not receive a written determination that it has failed to meet its good faith requirement for the extended period, the efforts of the Contractor will have been finally determined to have met the applicable standard for that extended period.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial products plans, i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled, "SMALL BUSINESS AND SMALL

DISADVANTAGED BUSINESS SUBCONTRACTING PLAN," the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.

- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled "DISPUTES ," from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

I.16 FAR 52.220-3 UTILIZATION OF LABOR SURPLUS AREA CONCERNS (APR 1984) -Deleted

I.17 FAR 52.220-4 LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (APR 1984) - Deleted

I.18 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 1995)

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanics employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) Payrolls and basic records. (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall



contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

- (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

I.19 FAR 52.222-6 DAVIS-BACON ACT (FEB 1995)

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "APPRENTICES AND TRAINEES." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (ii) The classification is utilized in the area by the construction industry.
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (iv) With respect to helpers, such a classification prevails in the area in which the work is performed.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for Determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

I.20 FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

I.21 FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled "DAVIS-BACON ACT," that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b)
 - (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - (2) Each payroll submitted shall be accompanied by a Statement of Compliance, signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify -
 - (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the Statement of Compliance required by subparagraph (b)(2) of this clause.
- (4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

I.22 FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR part 3, which are hereby incorporated by reference in this contract.

I.23 FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

- (a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled "DAVIS-BACON ACT," "CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION," "APPRENTICES AND TRAINEES," "PAYROLLS AND BASIC RECORDS," "COMPLIANCE WITH COPELAND ACT REQUIREMENTS," "WITHHOLDING OF FUNDS," "SUBCONTRACTS (LABOR STANDARDS)," "CONTRACT TERMINATION - DEBARMENT," "DISPUTES CONCERNING LABOR STANDARDS," "COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS," and "CERTIFICATION OF ELIGIBILITY," and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

- (b) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

I.24 FAR 52.222-12 CONTRACT TERMINATION - DEBARMENT (FEB 1988)

A breach of the contract clauses entitled "DAVIS-BACON ACT," "CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION," "APPRENTICES AND TRAINEES," "PAYROLLS AND BASIC RECORDS," "COMPLIANCE WITH COPELAND ACT REQUIREMENTS," "SUBCONTRACTS (LABOR STANDARDS)," "COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS," or "CERTIFICATION OF ELIGIBILITY" may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

I.25 FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and, 5 are hereby incorporated by reference in this contract.

I.26 FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 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.27 FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

I.28 FAR 52.222-16 APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

I.29 FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (APR 1984)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

I.30 FAR 52.222-26 EQUAL OPPORTUNITY (APR 1984)

- (a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (b) During performing this contract, the Contractor agrees as follows:
 - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
 - (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
 - (4) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
 - (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
 - (8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.
 - (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
 - (10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
 - (11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

I.31 FAR 52.222-28 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984)

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

I.32 FAR 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984)

(a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established recall lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause -

- (1) Includes, but is not limited to, openings that occur in jobs categorized as -
 - (i) Production and nonproduction;
 - (ii) Plant and office;
 - (iii) Laborers and mechanics;
 - (iv) Supervisory and nonsupervisory;
 - (v) Technical; and
 - (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and
- (2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own

organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as -
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

- (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local Government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
- (3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any

particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
 - (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.
- (d) Applicability.
- (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
 - (2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.
- (e) Postings.
- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.
 - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
 - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.
- (f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

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

I.33 FAR 52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(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 handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as -
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the 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 handicapped individuals and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.
- (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 \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I.34 FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1988)

- (a) The Contractor shall report at least annually, as required by the Secretary of Labor, on:
 - (1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workplace of the Contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1 of the year the report is due, or (2) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

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

I.35 FAR 52.223-2 CLEAN AIR AND WATER (APR 1984)

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

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

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
- (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- (4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

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

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

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

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

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

- (b) The Contractor agrees -

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

I.36 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (NOV 1991) - ALTERNATE I (NOV 1991) (DEVIATION)

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) (DEVIATION) The Contractor agrees to obtain, review and maintain a Material Safety Data Sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used. The Contractor agrees to maintain an accurate inventory and history of use of hazardous materials at each use and storage location.
- (c) (DEVIATION) The MSDS shall conform to the requirements of 29 C.F.R. 1910.1200(g).
- (d) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (e) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, or local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (f) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to --
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and

- (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (f)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
 - (3) The Government is not precluded from using similar or identical data acquired from other sources.
- (g) Except as provided in paragraph (g)(2) the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials under paragraph (b) of this clause.
- (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to mail MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
 - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container, the MSDS must be placed in a weather resistant envelope.

I.37 FAR 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.38 FAR 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 design, 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 and any employee of 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.39 FAR 52.225-9 BUY AMERICAN ACT - TRADE AGREEMENTS - BALANCE OF PAYMENTS PROGRAM. (JAN 1994)

- (a) This clause implements the Buy American Act (941 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), the North American Free Trade Agreement (NAFTA) Implementation Act (Pub.L. 103-182, 107 Stat. 2057) and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated, NAFTA, or Caribbean Basin country end products.

"Caribbean Basin country end product," as used in this clause, means an article that: (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term excludes products that are excluded from duty free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under

title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

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

"Designated country end product," as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

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

"Foreign end product," as used in this clause, means an end product other than a domestic end product. "NAFTA country," as used in this clause, means Canada or Mexico.

"NAFTA country end product," as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

- (b) The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "BUY AMERICAN ACT - TRADE AGREEMENTS - BALANCE OF PAYMENTS PROGRAM CERTIFICATE." An offer certifying that a designated,

NAFTA, or Caribbean Basin country end product will be supplied requires the Contractor to supply a designated, NAFTA, or Caribbean Basin country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product for line items subject to the Trade Agreements Act unless the foreign end product is a designated, NAFTA, or Caribbean end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

- (c) Offers will be evaluated in accordance with the policies and procedures of Subpart 25.4 of the FAR.

I.40 FAR 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAY 1992)

- (a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract--
 - (1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;
 - (2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba; or
 - (3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles.
- (b) The Contractor shall not acquire for use in the performance of this contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.
- (c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

I.41 FAR 52.225-15 BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER EUROPEAN COMMUNITY AND NORTH AMERICAN FREE TRADE AGREEMENTS. (MAY 1995)

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

"Components" means those articles, materials, and supplies incorporated directly into construction materials.

"Construction Materials" means an article, materials, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.



"Domestic construction material" means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the U.S., if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

"European Community construction material" means a construction material that (a) is wholly the growth, product, or manufacture of an EC country or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in an EC country into a new and different construction material distinct from the materials from which it was transformed.

"EC Country" means Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

"North American Free Trade Agreement (NAFTA) countries" means Canada or Mexico.

"NAFTA country construction material" means a construction material that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

- (b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide the EC and NAFTA construction materials are exempted from application of the Buy American Act.
- (c) The Contractor agrees that only domestic construction materials, NAFTA country construction materials or EC construction materials will be used by the Contractor, subcontractors, materialmen and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

I.42 FAR 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (AUG 1991)

- (a) This clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause entitled, "SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN." It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.
- (b) Definitions. As used in this clause:

"Indian organization" means the governing body of any Indian tribe (as defined by 25 U.S.C. 1452(c)) or entity established or recognized by the governing body for the purposes of 25 U.S.C., Chapter 17.

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

- (c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises the (25 U.S.C. 1544) maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.
 - (1) The Contractor may rely on the written representation of the Indian organization or Indian-owned economic enterprise.
 - (2) If the cost of subcontracting with an Indian organization or Indian-owned economic enterprise exceeds the cost of acquiring the supplies or services from a non-Indian source, the Contractor may request an adjustment to the following:
 - (i) The estimated cost of a cost-type contract;
 - (ii) The target cost of a cost-plus-incentive-fee prime contract;
 - (iii) The target cost and ceiling price of a fixed-price incentive contract; or
 - (iv) The price of a firm-fixed-price prime contract.
 - (3) The amount of the equitable adjustment to the prime contract shall be the lesser of --
 - (i) The difference between the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or enterprise and the corresponding estimated cost, target cost or firm-fixed-price which would have been included in a subcontract with the otherwise low, non-Indian offeror; or
 - (ii) Five percent of the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or enterprise.
 - (4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.
- (d) The Contracting Officer shall decide the amount of the adjustment and modify the contract accordingly. The Contracting Officer's decision is final and not subject to the "DISPUTES" clause of this contract.

I.43 FAR 52.230-2 COST ACCOUNTING STANDARDS (AUG 1992)

- (a) Unless the contract is exempt under 48 CFR, Subparts 9903.201-2 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall--
 - (1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR, Subpart 9903.202-1 through

9903.205-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

- (2) Follow consistently the Contractor's accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
- (3) Comply with all CAS, including any modifications and interpretations indicated thereto-contained in 48 CFR, Part 9904 (Appendix B, FAR loose-leaf edition), in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
- (4)
 - (i) Agree to an equitable adjustment as provided in the "CHANGES" clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.
 - (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
 - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the "CHANGES" clause of this contract.
- (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in

its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

- (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR part 9904 or a CAS rule or regulation in 48 CFR part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on:
 - (1) Establishing catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.

I.44 FAR 52.230-5 ADMINISTRATION OF COST ACCOUNTING STANDARDS (FEB 1995)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

- (a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed price, incentive, cost-plus-fixed fee, etc.) and other Contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government as follows:
 - (1) For any change in cost accounting practices required to comply with a new or modified CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, "COST ACCOUNTING STANDARDS," within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
 - (2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, "COST ACCOUNTING STANDARDS," or with subparagraph (a)(3) of the clause at FAR 52.230-3, "DISCLOSURE AND CONSISTENCY OF

COST ACCOUNTING PRACTICES," not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

- (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practice):
 - (i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
 - (ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.
- (b) After an ACO determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer with 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
 - (1) Cost impact proposals submitted for changes in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, "COST ACCOUNTING STANDARDS," shall identify the applicable standard and all contracts and subcontracts containing the clause in this contract entitled "COST ACCOUNTING STANDARDS," which have an award date before the effective date of that standard.
 - (2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clause at 52.230-2, "COST ACCOUNTING STANDARDS," or with subparagraph (a)(3) of the clause at FAR 52.230-3, "DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES," shall identify all contracts and subcontracts containing the clause at FAR 52.230-2, "COST ACCOUNTING STANDARDS," and FAR 52.230-3, "DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES."
 - (3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clause at FAR 52.230-2, "COST ACCOUNTING STANDARDS," or by subparagraph (a)(4) of the clause at FAR 52.230-3, "DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES," shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

- (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the "CAS" clause at FAR 52.230-2 or with subparagraphs (a)(3) or (a)(4) of the "DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES" clause at FAR 52.230-3.
- (e) For all subcontracts subject either to the "CAS" clause or to the "DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES" clause-
 - (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and
 - (2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:
 - (i) Subcontractor's name and subcontract number.
 - (ii) Dollar amount and date of award.
 - (iii) Name of Contractor making the award.
 - (iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.
- (f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agreed to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.
- (g) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

I.45 FAR 52.232-17 INTEREST (JAN 1991)

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

- (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
- (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
 - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I.46 FAR 52.233-1 DISPUTES (MAR 1994) -- 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. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. 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 submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
- (2) (i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -
- (A) Exceeding \$50,000; or

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

- (1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - (2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).
 - (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
 - (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.
 - (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$50,000 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 \$50,000, 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) At the time a claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. When using arbitration pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date 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) 48 CFR 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.47 FAR 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 onsite 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.48 FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

- (a) Notwithstanding any other clause of this contract -
 - (1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and
 - (2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this "NOTICE OF INTENT TO DISALLOW COSTS" clause shall not affect the Government's rights to take exception to incurred costs.

I.49 FAR 52.242-13 BANKRUPTCY (APR 1991)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, 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.50 FAR 52.244-5 COMPETITION IN SUBCONTRACTING (APR 1984)

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.

I.50(A) FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components. (OCT 1995)

(a) Definition.

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

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

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

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

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

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

I.51 FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before

shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

- (a) If the Government is shown as the consignor or the consignee, the annotation shall be:

"Transportation is for the U. S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."

- (b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

"Transportation is for the U. S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. DE-AC05-96OR22464. This may be confirmed by contacting the U. S. Department of Energy, Oak Ridge Operations, Procurement and Contracts Division, Post Office Box 2001, Oak Ridge, TN 37831-8756."

I.52 FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (APR 1984)

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

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

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- (d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

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

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

(End of certification)

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

I.53 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (JUL 1995)

- (a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are -
 - (1) Acquired for a U.S. Government agency account;
 - (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
 - (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
 - (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- (b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
- (c)
 - (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.
 - (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:



- (A) Sponsoring U.S. Government agency.
 - (B) Name of vessel.
 - (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) Except for contracts at or below the simplified acquisition threshold as described in FAR part 13, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.
- (e) The requirement in paragraph (a) does not apply to -
- (1) Contracts at or below the simplified acquisition threshold as described in FAR part 13;
 - (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
 - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-426-4610.

I.54 FAR 52.248-3 VALUE ENGINEERING (MAR 1989) (DEVIATION)

- (a) General.
 - (1) The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

- (2) (DEVIATION) This clause shall not apply under the following circumstances:
- (i) Where the Contractor was responsible for or exercised control over the development of the requirements, specifications, design, processes, etc., or
 - (ii) Where the instant contract savings are incentivized under any other provisions of the contract. However, the Contractor may propose that certain well defined work effort, consistent with the requirements of (i) above, may be removed from other cost savings programs under this contract, and will be governed by the requirements of this clause, subject to the Contracting Officer's approval.

(b) Definitions.

"Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that -

- (1) Requires a change to this, the instant contract, to implement; and
 - (2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change -
 - (i) In deliverable end item quantities only; or
 - (ii) To the contract type only.
- (c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format,

identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

- (1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.
 - (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
 - (3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.
 - (4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.
 - (5) A prediction of any effects the proposed change would have on collateral costs to the agency.
 - (6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
 - (7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.
- (d) Submission. The Contractor shall submit VECP's to the Contracting Officer.
- (e) Government action.
- (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.
 - (2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.
 - (3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing

contract. The Contracting Officer's decision to accept or reject all or part of any VECP shall be final and not subject to the "DISPUTES" clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) Sharing.

- (1) Rates. The Contractor's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by 25 percent for cost-reimbursement contracts.
- (2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to -
 - (i) Accept the VECP;
 - (ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and
 - (iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

- (g) Collateral savings. If a VECP is accepted, the instant contract amount shall be increased by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (1) the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or (2) \$100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the "DISPUTES" clause or otherwise subject to litigation under 41 U.S.C. 601-613.

I.55 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be Government-furnished property, as distinguished from Government property. The provisions of the clause entitled "GOVERNMENT PROPERTY," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

I.56 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

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

I.57 FAR 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.58 FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

I.59 DEAR 952.202-1 DEFINITIONS (SEP 1991)

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (c) Except as otherwise provided in this contract, the term subcontracts includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.
- (d) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

I.60 DEAR 952.204-2 SECURITY (APR 1993 AL 92-2R)

- (a) Responsibility. It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security and counterintelligence

regulations and requirements, be responsible for safeguarding all classified, unclassified sensitive, and proprietary information and protecting against sabotage, espionage, loss and theft of the classified, unclassified sensitive, and proprietary matter in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified, unclassified sensitive, and proprietary matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified, unclassified sensitive, and proprietary matter in the Contractor's possession is required after the completion or termination of the contract and such retention is approved by the Contracting Officer, the Contractor shall complete a certificate of possession to be furnished to DOE specifying the classified, unclassified sensitive, and proprietary matter in the Contractor's possession are to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

- (b) Regulations. The Contractor agrees to comply with all security and counterintelligence regulations and requirements of DOE in effect at the date of award.
- (c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).
- (j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

I.61 DEAR 952.204-70 CLASSIFICATION (APR 1993 AL 92-2R)

In the performance of work under this contract, the Contractor shall ensure that all information and equipment originated or generated under the contract in a classified or potentially classified subject area are reviewed by a Federal Government Original Classifier or a Federal Government or Contractor Derivative Classifier in accordance with classification regulations (e.g., internal agency directives) and guidance furnished to the Contractor by the DOE. Every subcontract and purchase order issued hereunder involving the origination or generation of classified information or equipment shall require that, in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that all such information or equipment in a classified or potentially classified subject area are reviewed by a Federal Government Original Classifier or a Federal Government or Contractor Derivative Classifier in accordance with classification regulations (e.g., internal agency directives) and guidance furnished to such subcontractor or supplier by the Contractor.

I.62 DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1984) (DEVIATION)

- (a) In connection with any activities in the performance of this contract, the Contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements furnished to the Contractor by the Contracting Officer, relating to those countries, which may from time to time, be identified to the Contractor by written notice as sensitive foreign nations. The Contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the Contracting Officer if the Contractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the Contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.
- (b) The provisions of this clause shall be included in any subcontracts.

I.63 DEAR 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984)

- (a) For purposes of this clause, a foreign interest is defined as any of the following:
 - (1) A foreign Government or foreign Government agency;

- (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
 - (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign Government, agency, firm, corporation or person; or
 - (4) Any person who is not a U.S. citizen.
- (b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.
 - (c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" shall mean DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
 - (d) The Contractor shall immediately provide the Contracting Officer written notice of any changes in the extent and nature of FOCI over the Contractor which would affect the answers to the questions presented in DEAR 952.204-73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.
 - (e) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Contracting Officer shall consider proposals made by the Contractor to avoid or mitigate foreign influences.
 - (f) If the Contracting Officer at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.
 - (g) The Contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the Contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer.
 - (h) Information submitted by the Contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
 - (i) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including rights to terminate this contract.

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

I.64 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUNE 1996)

- (a) Purpose. The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.



(1) Use of Contractor's Work Product.

- (i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.
- (ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

- (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by

the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not: (A) use such information for any private purpose unless the information has been released or otherwise made available to the public; (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; © submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

- (ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 19974)5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with subparagraphs (b)(2)(I)(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

- (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
- (2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.

(d) Subcontracts.

- (1) The contractor shall include a clause, substantially similar to this clause, including this paragraph in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR (FAR) Part 13 and involving performance of advisory and assistance services as that term is defined at 48(CFR (FAR) 37.201. The terms ‘contract,’ ‘contractor,’ and ‘contracting officer’ shall be appropriately modified to preserve the Government’s rights.
- (2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR (DEAR) 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest.

Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate to the satisfaction of the contractor the organizational conflict. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

- (e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (f) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

I.65 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

- (a) Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property by:
 - (1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.
 - (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
 - (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.66 DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1984)

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

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

I.67 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JAN 1992)

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d) (1) Indemnification. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or Governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

- (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
 1. Negligence;
 2. Contributory negligence;
 3. Assumption of risk; or
 4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or Governmental immunity; and
 - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have know, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
 - (v) The term "extraordinary nuclear occurrence" means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
 - (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:

- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the clause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder; take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to any, other clause of this contract, including the clause entitled "CONTRACT DISPUTES" provided, however, that this clause shall be subject to the clauses entitled "COVENANT AGAINST CONTINGENT FEES," Officials Not to Benefit, and Examination of Records by the Comptroller General, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as the term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.
- (l) This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after June 26, 1991.

I.68 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (APR 1989)

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

- (a) Contracted airlines. Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Property Management Regulation (FPMR), Temporary Regulation A-30, Temporary Regulation A-30 stipulates that cost-reimbursable contract employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, Contracting Officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the Contracting Officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their

employees traveling under GTR's provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the Contractor.

- (b) Hotels/motels. Participating hotels and motels which extend discounts are listed in the FTD, which shows rates, facilities, and identifies by code those which offer reduced rates to cost-reimbursable Contractor employees while traveling on official contract business.
- (c) Car rentals. The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms to cost-reimbursable Contractor employees while traveling on official contract business are listed in the FTD.
- (d) Procedures for obtaining service. (1) Identification and method of payment requirements for participating Federal contracted airlines are listed in the FTR. Travel discount air fares may be ordered by the issuance of a GTR either directly to the Contractor, or to a Scheduled Airline Travel Office (SATO) or Federal Travel Management Center (FTMC), provided the letter of identification signed by the cognizant Contracting Officer accompanies the order. In appropriate instances, such as geographical proximity, Contractors may obtain discount air fares through a DOE office of a cooperating local travel agency when neither a SATO or FTMC is available. Some airlines allow the purchase of discounted air fares with cash or credit card. (2) In the case of hotel and motel accommodations, reservations may be made by the Contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship. (3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.
- (e) Standard letter of identification. Contractors shall prepare for the authorizing Contracting Officer a letter of identification based on the following format:

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

To: (Source of ticketing, accommodations or rental)

Subject: Official Travel of Government Contractor

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

I.69 DEAR 970.5203-1 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.

- (c) - Deleted

I-70 DEAR 970.5203-2 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (FEB 1993) - Deleted

I-70 FAR 52.215-2 Audit and Records - Negotiation (Oct 1995)

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



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



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

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;

- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.
- (d) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition
 - (1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement: and
 - (2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
- (g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (a), in all subcontracts under this contract that exceed the simplified acquisition threshold in FAR Part 13, 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 cause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

I.71 DEAR 970.5204-2 Integration of Environment, Safety, and Health Into Work Planning and Execution. (JUN 1997) Replaces DEAR 970.5204-2 ENVIRONMENT, SAFETY AND HEALTH (GOVERNMENT-OWNED OR -LEASED) (JUN 1995) (RULEMAKING)

- (a) For the purposes of this clause,
 - (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:
 - (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed- upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on. designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
 - (1) Define the scope of work;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) The contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may require that the subcontractor submit a Safety Management System for the contractor's review and approval.

I.72 DEAR 970.5204-9 ACCOUNTS, RECORDS, AND INSPECTION (FEB 1993)

- (a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting (1) all allowable costs incurred, (2) collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, and (3) the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied. The system of accounts may match the DOE charts of accounts, at a minimum, it must be directly traceable to the DOE chart of accounts and maintained at the same or a greater level of detail.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its authorized representative at the reasonable times, before and during the period of retention provided for in (d) below, and the Contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant Government audit agency through the Contracting Officer.
- (d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fees accruals under this contract, shall be the property of the Government, and shall be 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 and final audit of accounts hereunder. Except as provided in this contract, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.
- (e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time in such manner as it shall deem appropriate.

- (g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this clause in all subcontracts (including fixed-price or unit price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) Internal Audit. The Contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Contracting Officer.

I.73 DEAR 970.5204-11 CHANGES (APR 1984) (DEVIATION)

- (a) (1) (DEVIATION) If, as a result of any instruction or direction given by DOE pursuant to the provisions of this contract, the level of the Contractor's management effort under this contract is materially increased or decreased, the fee will be equitably adjusted. In the event either party deems that an adjustment in fee is appropriate, it will, within thirty (30) days after issuance of the instruction or direction, so notify the other party in writing and the parties will attempt to agree upon the amount by which the fee should be increased or decreased. Failure of the parties so to agree shall constitute a dispute within the meaning of the article entitled "DISPUTES."
- (2) (DEVIATION) Services pursuant to mutual agreement (Related Services) under the provisions of this contract shall be performed without additional fee unless DOE and the Contractor shall mutually agree in writing that they will constitute a material increase in the level of the Contractor's management effort under this contract, in which event the parties hereto will negotiate in good faith to agree upon an equitable fee for such additional services. Failure of the parties so to agree shall constitute a dispute within the meaning of the article entitled "DISPUTES."
- (b) Work to continue. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

I.74 DEAR 970.5204-13 ALLOWABLE COSTS AND FEE (MANAGEMENT AND OPERATING CONTRACTS) (SEP 1991) (DEVIATION)

- (a) Compensation for Contractor's services. Payment for the allowable costs as hereinafter defined, and of the fees, if any, hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.
- (b) Fixed-Fee. The fixed-fee payable to the contractor for the performance of the work under this contract is identified in Section B.2 of this contract. There shall be no adjustment in the amount of the contractor's fixed-fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual cost for performance of that work.
- (c) (DEVIATION) Allowable costs. The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the Contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and are determined to be

allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on: (1) reasonableness, in accordance with FAR 31.201-3; (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work; and (3) recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not imply either that it is allowable or that it is unallowable.

(d) Items of allowable cost. Subject to the other provisions of this clause, the following items of cost of work done under this contract shall be allowable to the extent indicated:

- (1) Bonds and insurance, including self-insurance, as provided in the clause entitled "INSURANCE - LITIGATION AND CLAIMS."
- (2) Communication costs, including telephone services, local and long-distance calls, telegrams, cablegrams, postage, and similar items.
- (3) Consulting services (including legal and accounting), and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraph (e)(16) and (26).
- (4) (DEVIATION) Reasonable litigation expenses, including counsel fees, settlements and judgements, if incurred in accordance with the clause of the contract entitled "INSURANCE -- LITIGATION AND CLAIMS," in accordance with DOE approved Contractor litigation management procedures, (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable in this contract.
- (5) Losses and expenses (including settlements made with the consent of the Contracting Officer) sustained by the Contractor in the performance of this contract and certified in writing by the Contracting Officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.
- (6) Materials, supplies and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.
- (7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any "PATENT RIGHTS" clause of this contract.
- (8) Personnel costs and related expenses incurred in accordance with Appendix A, Personnel Costs and Related Expenses. It is specifically understood and agreed that Appendix A sets forth in detail personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the Contracting Officer. It is further understood and agreed that the Contractor will advise DOE of any proposed changes in any matters covered by said policies, practices or plans which relate to this item of cost, and that Appendix A may be modified from time to time in writing by mutual agreement of the Contractor and DOE without execution of an amendment to this contract for the

purpose of effectuating any such changes in, or additions to, Appendix A as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered Reimbursement Authorizations from the Contracting Officer or his representative. Types of personnel costs and related expenses to be incorporated into Appendix A, or amendments thereto, are as follows:

- (i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave, salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (Contractor) committees, provided, however, that the Contracting Officer's approval is required in each instance of total compensation to an individual employee in accordance with Appendix A. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;
- (ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and workers' compensation plans, (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);
- (iii) Travel (except foreign travel, which requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of Contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);
- (iv) (DEVIATION) Employee relations, welfare, morale, etc., (except employee recreation costs which are unallowable); programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications;
- (v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis); including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;
- (vi) Recruitment of personnel (including help-wanted advertisement), including service of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the Contractor for employment interviews; and
- (vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the contract.

- (9) (DEVIATION) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent approved by the Contracting Officer and as allowable under subparagraph (f) of the clause of this contract entitled "PROPERTY."
 - (10) Subcontracts and purchase orders, including procurements from Contractor-controlled sources, subject to approvals required by other provisions of this contract.
 - (11) Subscriptions to trade, business, technical, and professional periodicals as approved by the Contracting Officer.
 - (12) Taxes, fees, and charges levied by public agencies which the Contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.
 - (13) Utility services, including electricity, gas, water, and sewage.
 - (14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205-6(j)(3)(iv).
 - (15) Establishment and maintenance of financial institution accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the Contracting Officer.
 - (16) (DEVIATION) Reserved.
 - (17) Maintenance, inspection, repair, replacement, and transportation of construction plant and equipment to the extent not covered by rentals or insurance and as provided in rental agreements approved by the Contracting Officer.
 - (18) Rental for (i) construction plant and equipment rented by the Contractor from others at rates and under written agreements approved by the Contracting Officer, and (ii) construction plant and equipment owned and furnished by the Contractor under this contract.
 - (19) (DEVIATION) Supplier Award and Recognition Programs, subject to Contracting Officer approval, for: (i) Small Business Concerns, (ii) Small Business Concerns owned and controlled by socially and economically disadvantaged individuals, (iii) others that provide superior service requiring special recognition including awards and seminars.
 - (20) (DEVIATION) Lockheed Marietta Corporation Home Office Cost directly attributable to the performance of this contract subject to the clause entitled "ADVANCE UNDERSTANDING ON ALLOWABLE COSTS - HOME OFFICE EXPENSE."
- (e) Items of unallowable costs. The following items of costs are unallowable under this contract to the extent indicated:

- (1) Advertising and public relations costs designed to promote the Contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs (i) specifically required by the contract, (ii) approved in advance by the Contracting Officer as clearly in furtherance of work performed under the contract, (iii) that arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance, disposing of scrap or surplus materials, the transfer of federally owned or originated technology to State and local Governments and to the private sector, or acquisition of contract-required supplies and services or (iv) where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.
- (2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the Contractor.
- (3) (DEVIATION) Proposal expenses and costs of proposals, except to perform related services (e.g. Work For Others), or as otherwise approved by the Contracting Officer.
- (4) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the Contractor and employee prior to the rendering of the services or an established plan consistently followed by the Contractor, or (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.
- (5) Central and branch office expenses of the Contractor, except as specifically set forth in the contract.
- (6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the Contractor for the purpose of obtaining Government business.
- (7) Contingency reserves, provisions for.
- (8) Contributions and donations, including cash, Contractor-owned property and services, regardless of the recipient.
- (9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight line method), or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.
- (10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.
- (11) (DEVIATION) Entertainment, including costs of amusement, diversion, social activities, and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals,

transportation, and gratuities; costs of membership in any social, dining or country club or organization. Costs made specifically unallowable as entertainment are not allowable under other provisions of this contract.

- (12) (DEVIATION) Fines and penalties, unless with respect to civil fines and penalties only, the Contractor demonstrates to the Contracting Officer that they were incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments are also unallowable except as may be specifically provided in regulations implementing those civil or criminal penalty provisions. In addition, the Contracting Officer has authority to approve reimbursement of a civil fine or penalty under the clause entitled "PRE-EXISTING CONDITIONS," or if the Contractor demonstrates to the Contracting Officer that the fine or penalty was imposed without regard to whether the Contractor or its employees was at fault or exercised due care and could not have been avoided by the exercise of due care.
- (13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the Contractor from others.
- (14) Insurance (including any provisions of a self-insurance reserve) on any person where the Contractor under the insurance policy is beneficiary, directly or indirectly, and insurance against loss of or damage to Government property unless authorized by the clause of the contract entitled "INSURANCE - LITIGATION AND CLAIMS."
- (15) Interest, however represented (except (i) interest incurred in compliance with the clause entitled "STATE AND LOCAL TAXES" or, (ii) imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP), provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose), bond discounts and expenses, and costs of financing and refinancing operations.
- (16) (DEVIATION) Legal, accounting, and consulting services and related costs incurred in connection with the preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent infringement litigation except where incurred pursuant to the Contractor's performance of the Government funded technology transfer mission and in accordance with the clause of this contract entitled "INSURANCE - LITIGATION AND CLAIMS."
- (17) (DEVIATION) Losses or expenses:
 - (i) on, or arising from the sale, exchange, or abandonment of capital assets, including investments;
 - (ii) on other contracts, including the Contractor's contributed portion under cost-sharing contracts;

- (iii) in connection with price reductions to and discount purchases by employees and others from any source; or
- (iv) that -
 - (A) Are compensated for by insurance or otherwise or which would have been compensated by insurance required by law or by written direction of the Contracting Officer but which the Contractor failed to procure or maintain through its own fault or negligence;
 - (B) Result from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel (as that term is defined in the clause of this contract entitled, "INSURANCE - LITIGATION AND CLAIMS").
 - (C) Represent liabilities to third persons that result from willful misconduct, lack of good faith, or failure to exercise prudent business judgement on the part of any of the Contractor's managerial personnel in accordance with the clause of this contract entitled "INSURANCE-LITIGATION AND CLAIMS." The Contractor shall have the burden of demonstrating to the Contracting Officer that willful misconduct or lack of good faith, or failure to exercise prudent business judgement was not the cause of the loss.
 - (D) Represent liabilities to third persons for which the Contractor has expressly accepted responsibility under other terms of this contract.
- (18) (DEVIATION) Reserved
- (19) Membership in trade, business, and professional organizations, except as approved by the Contracting Officer.
- (20) Precontract costs, except as expressly made allowable under the provisions in this contract.
- (21) Research and development costs, unless specifically provided for elsewhere in this contract.
- (22) Selling cost, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the Contractor's product for agency use.
- (23) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.
- (24) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including listing of securities on exchanges, taxes which are paid contrary to the clause entitled "STATE AND LOCAL TAXES," federal taxes on net income and excess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans

pursuant to Section 4971 or Section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

- (25) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the Contractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the Contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the Contracting Officer.
- (26) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of DOE applicable to the borrowing of such an individual from another cost-type Contractor.
- (27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet mission requirements. Individual Contractor determinations of nonavailability of commercial discount airfare or Government contract airfare will not be contested by DOE when the Contractor can reasonably demonstrate such nonavailability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the Contractor must justify and document the applicable condition(s) set forth above.
- (28) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this contract.
- (29) Late premium payment charges related to employee deferred compensation plan insurance.
- (30) Facilities capital cost of money. (CAS 414 and CAS 417).
- (31) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature as delineated in the clause entitled "LEGISLATIVE LOBBYING COST PROHIBITION," incorporated elsewhere in this contract.
- (32) (DEVIATION) Commercial automobile rental expenses unless approved by the Contracting Officer. This does not include rental of automobile when on official travel.
- (33) Costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government or a State, local, or foreign Government, as provided in the clause

titled "COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS" incorporated elsewhere in this contract.

- (34) Cost of alcoholic beverages.
- (35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the Contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the Contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.
- (36) (DEVIATION) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the Contractor and/or Subcontractor against otherwise unallowable costs, unless such insurance or bond is required by law, the express terms of this contract, or the specific written direction of the Contracting Officer.
- (37) (DEVIATION) Costs incurred in connection with any employee action, as provided in the clause entitled "COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS."

I.75 DEAR 970.5204-15 OBLIGATION OF FUNDS (FEB 1993)

- (a) Obligation of funds. **The amount presently obligated by the Government with respect to this contract is \$2,464,429,459.27 dollars.** Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in this amount presently obligated. Such collections, to the extent actually received by the Contractor shall be processed and accounted for in accordance with applicable requirements specified in the Baseline List of Required Compliance Documents, Appendix E, to this contract, as provided in the clause entitled "PAYMENTS AND ADVANCES." Nothing in this paragraph (a) is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.
- (b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the clause entitled "TERMINATION," or costs of claims allowable under the contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the clause entitled "PAYMENTS AND ADVANCES," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the Contractor's fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of (1) collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements specified in the Baseline List of Required Compliance Documents, Appendix E, as provided in the clause entitled "PAYMENTS AND ADVANCES," and (2) other funds which DOE



may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

- (c) Notices - Contractor excused from further performance. The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections under paragraph (a) above), plus the Contractor's best estimate of collections to be received and available during the 45 day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed rate for only 45 days and to cover the Contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) above) less the amount of the Contractor's fee then earned but not paid, is in the Contractor's best judgment either sufficient only to liquidate outstanding commitments and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the article entitled "TERMINATION."
- (d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the Contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and instruction may be amended or supplemented from time to time by DOE. The Contractor hereby agrees (1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives, (2) to use its best efforts to comply with other requirements of such plans and directives, and (3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.
- (e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the clause entitled "TERMINATION."

I.76 DEAR 970.5204-16 PAYMENTS AND ADVANCES (FEB 1993) (DEVIATION)

- (a) (DEVIATION) Installments of fixed-fee. The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the Contracting Officer.
- (b) Reserved.
- (c) Reserved.
- (d) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued

costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

- (e) Special financial institution account - use. All advances of Government funds shall be withdrawn pursuant to a letter of credit in favor of the financial institution or, in the option of the Government, shall be made by check payable to the Contractor and deposited only in the Special Financial Institution Account, which is attached hereto and incorporated into this contract as Appendix B. The Contractor shall deposit, as directed by DOE, any other revenues received in connection with the work under this contract. No part of the funds in the Special Financial Institution Account shall be (1) mingled with any funds of the Contractor or (2) used for a purpose other than that of making payments for costs allowable and fees earned under this contract or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer shall at any time determine that the balance of such financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
- (f) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (g) Review and approval of costs incurred. The Contractor shall prepare and submit annually as of September 30, a voucher for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the voucher, and DOE, after audit and appropriate adjustment, will approve such voucher. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.
- (h) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after (1) compliance by the Contractor with DOE's patent clearance requirements, and (2) the furnishing by the Contractor of:
 - (i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, or other credits applicable to allowable costs under the contract;
 - (ii) A closing financial statement;
 - (iii) The accounting for Government-owned property required by the clause entitled "PROPERTY;" and

- (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
 - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor should provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also contract clause entitled "INSURANCE - LITIGATION AND CLAIMS"); and
 - (C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.
 - (D) (DEVIATION) Claims for reimbursement of costs arising from the Contractor's Noncontributing Pension Plan and employee welfare benefit plans (including but not limited to medical, life, and workers' compensation) in the event DOE does not select a replacement Contractor to assume responsibility for such plans.

In arriving at the amount due the Contractor under this clause, there shall be deducted, any claim which the Government may have against the Contractor in connection with this contract, and deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Financial Institution Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

- (i) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (j) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
- (k) (DEVIATION) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements specified in the Baseline List of Required Compliance Documents, Appendix E, and, to the extent consistent with

applicable provisions contained in DOE 2200.6A, shall be deposited in the Special Financial Institution Account to be available for payment of allowable cost under this contract.

- (1) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.

I.77 DEAR 970.5204-17 LEGISLATIVE LOBBYING COST PROHIBITION (JUN 1988)

- (a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:
 - (1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;
 - (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
 - (3) Any attempt to influence (i) the introduction of Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;
 - (4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or
 - (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.
- (b) Costs of the following activities are excepted from the coverage of (a) above; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:
 - (1) Providing Members of Congress, State legislatures or subdivisions thereof, or their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous, including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) from Members of Congress, State legislatures or subdivisions thereof, or their staff members or staff of cognizant legislative committees, information or expert advice of a factual, technical, or scientific nature, with respect to topics

directly related to the performance of the contract or proposed legislation. Reasonable costs for transportation, lodging, or meals incurred by Contractor employees for the purpose of providing such information or advice shall also be reimbursable; provided such costs also comply with the allowable cost provisions of the contract.

- (2) Any lobbying made unallowable under subparagraph (a)(3) above to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the Contractor's authority to perform the contract if authorized by the Contracting Officer.
- (3) Any activity specifically authorized by statute to be undertaken with funds from the contract.
- (c) Unallowable lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.
- (d) The Contractor's annual certification, submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditures Accrued required under the clause titled "PAYMENTS AND ADVANCES") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the Contractor's certification that the requirements and standards of this clause have been complied with.
- (e) The Contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.
- (f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when: (1) an employee engages in legislative liaison activities (as delineated in paragraphs (a) and (b) above) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the Contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs. When conditions (f)(1) and (2) of this paragraph are met, the Contractor is not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (f)(1) and (2) of this paragraph are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of legislative liaison activity time spent by employees during any calendar month.
- (g) During contract performance, the Contractor should resolve, in advance, any significant questions or disagreements between the Contractor and DOE concerning compliance with this clause.

I.78 DEAR 970.5204-19 PRINTING (APR 1984)

- (a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) In all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Contractor shall include a provision substantially the same as this clause.

I.79 DEAR 970.5204-20 MANAGEMENT CONTROLS (FEB 1993)

- (a) The Contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods and procedures adopted by management to reasonably ensure that: The mission and functions assigned to the Contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against theft, fraud, waste, and unauthorized use; all encumbrances and costs that are incurred and fees that are earned under the contract are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the Contractor in connection with work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the Contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the Contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and internal controls in their areas of assigned responsibility. The Contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and internal controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the system are being accomplished and that these systems and controls are working effectively.
- (b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

I.80 DEAR 970.5204-21 PROPERTY (JUL 1995) (DEVIATION) (RULEMAKING)

- (a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) Title to Property. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of

processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

- (c) Identification. To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate ownership by the Government.
- (d) Disposition. The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government property which had come into the possession or custody of the Contractor under this contract.
- (e) Protection of Government property -- Management of high-risk property and classified materials.
 - (1) The Contractor shall take all reasonable precautions, as directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the Contractor's possession or custody.
 - (2) The Contractor must ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high risk property and classified materials throughout its life cycle. Policies, practices and procedures for management of property, and in particular high-risk property and classified materials, are contained in the Federal Property Management Regulations and the Department of Energy Property Management Regulations. The Contractor is to comply with these regulations.
 - (3) High-risk property is property that the loss or transfer of which could pose risks to the public, the environment, or the national security interests of the United States, and includes proliferation-sensitive, nuclear-related or dual-use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and produced property, including property on the militarily critical technologies list.
- (f) (1) Risk of loss of Government property. The Contractor shall be responsible and compensate the Government for the loss or destruction of, or damage to, Government property unless the Contractor demonstrates to the Contracting Officer that such loss, damage or destruction was not caused by any of the following:

- (i) willful misconduct or lack of good faith or failure to exercise prudent business judgment on the part of the Contractor's managerial personnel; or
 - (ii) failure of the Contractor to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or
 - (iii) failure of the Contractor to establish or properly maintain or administer an approved property management system in accordance with paragraph (j) of this clause.
- (2) (DEVIATION) If the Contractor receives notice of a failure under (f)(1) above, and if the Contractor fails to take necessary corrective action within 30 days, the Contractor shall be liable for any damage, destruction or loss of Government property unless the Contractor establishes by clear and convincing evidence such damage, destruction or loss did not relate to the notified failure.
- (3) For purposes of subparagraph (f)(1) of this clause, the value of Government property shall be determined as follows:
- (i) (DEVIATION) For damaged property, the value of the property shall be the cost of repairing such damaged property, together with any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. In the event the cost of repair of the damaged property exceeds the fair market value, the property shall be considered destroyed. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.
 - (ii) For destroyed or lost property, the value of the property shall be the fair market value of such property at the time of such loss or destruction, together with any costs incurred for temporary replacement or costs associated with the disposition of destroyed property less the reasonable salvage value of the destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.
- (4) The cost of insurance obtained by the Contractor to cover the risk of loss referred to in subparagraph (f)(1) of this clause is not allowable.
- (g) (DEVIATION) Reimbursement for inventory shortages. Notwithstanding the requirements of paragraph (f)(1) above, the Contractor will reimburse the Government for all inventory shortages above .5% per inventory cycle. This requirement covers precious metals, stores inventories, personal computers and related equipment, general sensitive items, and moveable capital equipment (2 year inventory). The shortages will be tracked and evaluated against the .5% threshold, in two categories: (1) precious metals, stores inventories, personal computers and related equipment, and general sensitive items; and (2) moveable capital (2 year inventory). The value of the missing property will be determined as described in paragraph (f)(3)(ii).
- (h) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor, the Contractor:

- (1) shall immediately inform the Contracting Officer of the occasion and extent thereof,
- (2) shall take all reasonable steps to protect the property remaining, and
- (3) shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer.

The contractor shall take no action prejudicial to the right of the Government to recover therefore and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

- (i) Use of Government property. Government property shall be used only in accordance with the terms of this contract.
- (j) (DEVIATION) Property Management.
 - (1) The Contractor shall maintain and administer an approved property management system of accounting for and control, utilization, maintenance, repair, protection and preservation of Government property in its possession under the contract. The Contractor's property management system shall be approved by the Contracting Officer and maintained and administered in accordance with sound business practice and in accordance with Federal Property Management Regulations and the Department of Energy Property Management Regulations and such directives or instructions which the Contracting Officer may from time to time prescribe. The Contractor's performance will be evaluated on meeting or exceeding agreed upon expectations in accordance with the appropriate fee arrangement, set forth elsewhere in this contract.
 - (2) In order for a property management system to be approved, the Contractor shall be obligated to employ and maintain a property management system that incorporates the best business practices and methods. The system shall provide for:
 - (i) comprehensive coverage from the requirement identification, through its life cycle to final disposition;
 - (ii) employee personal responsibility for Government-owned property;
 - (iii) full integration with the Contractor's other administrative and financial systems; and
 - (iv) (DEVIATION) maintain a reliable method for implementing continuous improvements established by "benchmarking".
 - (3) (DEVIATION) Reserved.
- (k) (DEVIATION) Contractor's Managerial Personnel. The term "Contractor's managerial personnel" as used in this clause means the Contractor's Board of Directors, and those positions listed in Key Personnel, Appendix J, to this contract, when each of these is acting in such designated capacity.

I.81 DEAR 970.5204-22 CONTRACTOR PURCHASING SYSTEM. (OCT 1995)

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- (a) *General.* The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause, 48 CFR (DEAR) 970.5204-44, and 48 CFR (DEAR) 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (w) of this clause.
 - (b) *Acquisition of Utility Services.* Utility services shall be acquired in accordance with the requirements of 48 CFR (DEAR) 970.0803.
 - (c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR (DEAR) Subpart 917.74.
 - (d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR (DEAR) 970.7109.
 - (e) *Audit of Subcontractors.*
 - (1) The contractor shall provide for:
 - (i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and
 - (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.
 - (2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontract. The contractor shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.
 - (3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.

- (4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of FAR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR (DEAR) Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR (DEAR) 970.7105 and 48 CFR (DEAR) 970.3102-15(b).
- (f) *Bonds and Insurance.*
 - (1) The contractor shall require performance bonds in penal amounts as set forth in FAR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of \$25,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.
 - (2) A payment bond shall be obtained on Standard Form 25A, modified to name the contractor as well as the United States of America as obligees, for all fixed price, unit-price and cost-reimbursement construction subcontractors in excess of \$25,000. The penal amounts shall be determined as set forth in FAR 28.102-2(b).
 - (3) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.
- (g) *Buy American.* The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR (DEAR) 970.5203-3 and 48 CFR (DEAR) 970.5204-3. The contractor shall forward determinations of nonavailability of individual items to the DOE contracting officer for approval. Items in excess of \$100,000 require the prior concurrent of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at \$100,000 or less.
- (h) *Construction and Architect-Engineer Subcontracts.*
 - (1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
 - (2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."
 - (3) *Prevention of Conflict of Interest.*
 - (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a -turnkey- subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

- (ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
 - (iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the [[Page 49517]] subcontractor inspecting its work and the authority of the inspector are clearly defined.
- (i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR (DEAR) 970.7105.

Contractor-Subcontractor Relationship. The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontractors shall be in the name of the contractor, and shall not bind or purport to bind the Government.

- (k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of FAR Part 45, 48 CFR (DEAR) 945, the Federal Property Management Regulations 41 CFR 101, the DOE Property Management Regulations 41 CFR 109, and their contracts.

(1) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Procurement Executive.

- (m) Leasing of Motor Vehicles. Contractors shall comply with FAR 8.11 and 48 CFR (DEAR) 908.11.

- (n) Make-or-Buy Plans. Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the Make-or-Buy Plan clause of this contract and the contractor's approved make-or-buy plan.

- (o) Management Acquisition and Use of Information Resources.

Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

- (p) Priorities, Allocations and Allotments. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

- (q) Purchase of Special Items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR (DEAR) 908.71 and the Federal Property Management Regulations, 41 CFR 101:

- (1) Motor vehicles--48 CFR 908.7101
- (2) Aircraft--48 CFR 908.7102

- (3) Security Cabinets--48 CFR 908.7106
 - (4) Alcohol--48 CFR 908.7107
 - (5) Helium--48 CFR 908.7108
 - (6) Fuels and packaged petroleum products--48 CFR 908.7109
 - (7) Coal-48 CFR 908.7110
 - (8) Arms and Ammunition--48 CFR 908.7111
 - (9) Heavy Water--48 CFR 908.7121(a)
 - (10) Precious Metals--48 CFR 908.7121(b)
 - (11) Lithium--48 CFR 908.7121(c)
 - (12) Products and services of the blind and severely handicapped--41 CFR 101.26-701
 - (13) Products made in Federal penal and correctional institutions--41 CFR 101-26.702
- (r) Purchase vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:
- (1) at time of original acquisition;
 - (2) when lease renewals are being considered: and
 - (3) at other times as circumstances warrant.
- (s) Quality Assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.
- (t) Setoff of Assigned Subcontractor Proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR (DEAR) 932.803.
- (u) Strategic and Critical Materials. The contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) Termination. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in FAR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in FAR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.
- (w) Unclassified Controlled Nuclear Information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR Part 1017.

I.82 DEAR 970.5204-23 STATE AND LOCAL TAXES (APR 1984)

- (a) The Contractor agrees to notify the Contracting Officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Contracting Officer has advised the Contractor, is or may be inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the Contracting Officer or on the basis of advice from the Contracting Officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
- (b) The Contractor agrees to take such action as may be required or approved by the Contracting Officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Contracting Officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Contractor. If the Contracting Officer directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "INSURANCE - LITIGATION AND CLAIMS" shall apply and the costs and expenses incurred by the Contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the Contractor.
- (c) The Government shall hold the Contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

I.83 DEAR 970.5204-24 SUBCONTRACTOR COST OR PRICING DATA (JUN 1988) (DEVIATION)

- (a) The following clause shall be inserted in all subcontracts where such subcontracts are over \$500,000 and any modifications over \$500,000 to such subcontracts, even though the original amount of the subcontract is \$500,000 or less:

CERTIFIED COST OR PRICING DATA (APR 1984)

- (a) (1) The subcontractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each sub-subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete and current.

- (2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each sub-subcontract, the price of which is expected to exceed \$500,000, and (ii) the negotiation of the price of each change or modification to a sub-subcontract under this subcontract for which the price adjustment is expected to exceed \$500,000.
 - (3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the subcontractor has not been required to furnish cost or pricing data; or (ii) the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the subcontractor states in writing the basis for applying this exception.
 - (4) In submitting the cost or pricing data, the sub-subcontractor shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by sub-subcontractors to the next higher-tier sub-subcontractor or the subcontractor, as applicable, for retention.
- (b) The certificates required by this clause shall be in the form set forth below.

SUBCONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FAR 15.804-6(d)), to the Contractor in support of ____* are accurate, complete, and current as of _____**.

Firm
Name
Title
Date of execution***

*Identify the proposal, quotation, request for price adjustment, or other submission involved.

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

- (c) (DEVIATION) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract change or other modification involving an amount in excess of \$500,000 were accurate, complete, and current, the Contractor, DOE, or DOE's authorized representative shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which

will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

- (d) If the original price of this subcontract exceeds \$500,000 or the price of any change or other modification to this subcontract is expected to exceed \$500,000, the subcontractor agrees to furnish the Contractor certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- (e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any sub-subcontract change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification result from a change or modification to the subcontract, nor does it apply to a sub-subcontract change or modification, at any tier, where the subcontract is not firm fixed-price or fixed-price with escalation unless the price for such change or other modification becomes reimbursable under the subcontract.
- (f) The subcontractor agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each sub-subcontract hereunder in excess of \$500,000 and in each sub-subcontract of \$500,000 or less, at the time of making a change or other modification thereto in excess of \$500,000.
- (g) If the prime Contractor determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the subcontractor, or any sub-subcontractor pursuant to this clause or any sub-subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the subcontractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.
- (h) Failure of the Contractor and the subcontractor to agree on any of the matters in paragraph (g) above shall be a dispute concerning a question of fact subject to the Disputes provisions of this subcontract.

Note: Since the subcontract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain sub-subcontracts, it is expected that the subcontractor may wish to include a clause in each such sub-subcontract requiring the sub-subcontractor to appropriately indemnify the subcontractor. It is also expected that any sub-subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower-tier sub-subcontractors.

- (b) This clause may also be used for subcontracts of \$500,000 or less for which a certificate of cost or pricing data is obtained and, if so used, the \$500,000 amount stated in the clause should be appropriately modified.
- (c) The Head of the Contracting Activity, for contracts estimated to be within the limits of delegated authority, may, without power of redelegation, approve the waiver cited in FAR 15.804-3(i).

I.84 DEAR 970.5204-25 WORKMANSHIP AND MATERIALS (APR 1984) (DEVIATION)

- (a) Grade of workmanship and materials. Unless otherwise directed by the Contracting Officer or expressly provided for by specifications issued under this contract:
 - (1) All workmanship shall be first class; and
 - (2) All articles, equipment and materials incorporated in the work are to be:
 - (i) (DEVIATION) New or surplus as appropriate and of the most suitable grade of their respective kinds for the purpose;
 - (ii) In accordance with any applicable drawings and specifications; and
 - (iii) Installed to the satisfaction and with the approval of the Contracting Officer.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality.

- (b) Samples and test results. If the Contracting Officer so requires, the Contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

I.85 DEAR 970.5204-26 NUCLEAR SAFETY (APR 1984)

- (a) The activities under this contract include the operation of nuclear facilities. The Contractor recognizes that such operation involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the Contractor will exercise a degree of care commensurate with the risk involved.
- (b) The Contractor shall comply with all applicable regulations of DOE concerning nuclear safety and with those requirements (including reporting requirements and instructions) of DOE concerning nuclear safety of which it is notified in writing by the Contracting Officer.
- (c) Prior to the initial startup of any nuclear facility under this contract and prior to any subsequent startup following a change which represents a significant deviation from the procedures, equipment, or analyses described in the safety analysis reports or other hazards summary reports for that facility, the Contractor shall:
 - (1) Prepare a safety analysis report and detailed plans and procedures designed to assure the safe operations and maintenance of the facility in accordance with applicable DOE regulations and directives. For nuclear reactors and critical facilities, technical specifications shall also be provided.
 - (2) Establish nuclear safety control procedures to be used within the Contractor's organization to insure competent independent review and internal approval of the safety analysis report and the detailed plans and procedures specified in (1) above.

- (3) Submit to the Contracting Officer for his approval such procedures relating to nuclear safety as may be designated by him.
 - (4) Carry out a program of initial training and periodic requalification designed to assure that all personnel who will be engaged in nuclear operations or maintenance understand the approved plans and procedures for nuclear safety and are qualified to perform their assigned functions; and
 - (5) Obtain the approval of the Contracting Officer prior to start-up of the facility.
- (d) In the operation and maintenance of any nuclear facility under this contract, the Contractor shall:
- (1) Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel, and except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified and authorized to evaluate any emergency condition and take prompt effective action with respect thereto.
 - (2) Operate the facility within the technical specifications or operational safety requirements which are approved by the Contracting Officer.
 - (3) Follow strictly the procedures relating to nuclear safety approved by the Contracting Officer in (c)(3) above, and submit to the Contracting Officer for his approval, any proposed changes in such procedures.
 - (4) Establish an auditable, well-defined, internal safety review and inspection system approved by the Contracting Officer (including review and inspection reports by competent technical personnel) that will:
 - (i) Provide frequent and periodic checks of facility performance and of the qualifications and training of operating and maintenance personnel, and (ii) provide for investigation of any unusual or unpredicted conditions that might affect safe operation.
 - (5) Report promptly to the Contracting Officer any change in the physical condition of the facility or its operating characteristics that might, in the judgment of the Contractor, affect the safe operation of the facility.
 - (6) Terminate operations at the facility immediately whenever so instructed by the Contracting Officer, or whenever, in the judgment of the Contractor, the risk of a nuclear incident endangering persons or property warrants such action.
 - (7) Prepare, in cooperation with other services and facilities available at the site and with the approval of the Contracting Officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons on the site; participate as directed in the integration of the Contractor's and Contracting Officer's emergency plans with the responsible state and local Government's emergency plans for protection of the public off-site; instruct its personnel as to their participation in such plans and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.

- (8) At an appropriate time as determined by the Contracting Officer, prepare and submit to the Contracting Officer for his approval, shutdown, decommissioning, decontamination and property management plans leading to orderly and safe program disposition of the nuclear facility and any associated nuclear wastes or other hazardous material.
- (9) In the event that the Contractor fails to comply with said standards and requirements of DOE, the Contracting Officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter a start order for resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

I.86 DEAR 970.5204-27 CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES (MAY 1989) (DEVIATION)

The Contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the Contractor all consultant or other comparable employment services which the employees propose to undertake for others, related to any technology or technical data produced in performance of work under the contract. The Contractor shall transmit to the Contracting Officer all information obtained from such disclosures as requested by the Contracting Officer. The Contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE contractor in the same or related energy field or another organization except with the prior approval of the Contracting Officer. If the Contractor believes, with respect to any employee who is employed full-time on the contract work, that any proposed consultant or other comparable employment service may involve:

- (1) A rate of remuneration significantly in excess of the employee's regular rate of remuneration;
- (2) a significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE's contractors;
- (3) the Contractor's responsibility to report fully and promptly to DOE all significant research and development information; or
- (4) the patent provisions of the Contractor's contract with DOE,

the Contractor shall obtain the prior approval of the Contracting Officer for such consultant or other comparable employment service.

I.87 DEAR 970.5204-28 ASSIGNMENT (APR 1984)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Contracting Officer.

I.88 DEAR 970.5204-29 PERMITS OR LICENSES (APR 1984)

Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

I.89 DEAR 970.5204-30 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (APR 1984)

- (a) 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.
- (b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime contractor, as the case may be, of all relevant information concerning the dispute.

I.90 DEAR 970.5204-31 INSURANCE - LITIGATION AND CLAIMS (JUN 1995) (RULEMAKING)

- (a) (DEVIATION) The Contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The Contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer. The costs of such litigation shall be allowable in accordance with the clause entitled "ALLOWABLE COSTS AND FEE".
- (b) The Contractor shall give the Contracting Officer immediate notice in writing of any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract. Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action. The Contractor, with the prior written authorization of the Contracting Officer, shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.
- (c) (1) (DEVIATION) Except as provided in subparagraph (c)(2) of this clause, and to the extent required by law or as approved by the written direction of the Contracting Officer, the Contractor shall provide and maintain insurance or bonds such as workers' compensation, employers liability, commercial general liability (bodily injury), commercial automobile liability (bodily injury and property damage) insurance.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

- (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.
- (d) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.
- (e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the Contractor shall be reimbursed --
 - (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
 - (2) For liabilities (and expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled "OBLIGATION OF FUNDS."
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, judgement and settlements) --
 - (1) Which are otherwise unallowable by law or the provisions of this contract.
 - (2) For which the Contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer.
- (h)
 - (1)
 - (i) (DEVIATION) Except for Worker's Compensation claims, the Contractor's liabilities to third persons, including employees, (and any expenses incidental to such liabilities, including litigation costs) are not allowable unless the Contractor demonstrates to the Contracting Officer that such liabilities were not caused by: the willful misconduct or lack of good faith of the Contractor's managerial personnel; or failure to exercise prudent business judgment by the Contractor's managerial personnel.
 - (ii) Costs which may be unallowable under (h)(1)(i) above, shall be differentiated and accounted for by the Contractor so as to be separately identifiable. The Contracting Officer shall generally withhold payment and not authorize the use of funds advanced under the contract for payment of such costs. However, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the Contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

- (2) Punitive damages are not allowable unless the Contractor demonstrates to the Contracting Officer that the act or failure to act which gave rise to the liability occurred as a result of compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.
 - (3) The cost of insurance procured by the Contractor to cover the third-party liabilities referenced in subparagraph (g)(1) of this clause is not allowable.
 - (4) (DEVIATION) The term "Contractor's managerial personnel" as used in this clause means the Contractor's Board of Directors, and those positions listed in Appendix J, Key Personnel, to this contract, when each of these is acting in such designated capacity.
- (i) The Contractor may, at its own expense and not as an allowable cost, procure for its own protection, insurance to compensate the Contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
 - (j) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall --
 - (1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
 - (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending a claim; or counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
 - (3) Authorize Department representatives to settle the claim or to defend or represent the Contractor in and/or to take charge of any litigation, if required by the Department, when the liability is not insured or covered by bond. In any action against more than one Department Contractor, the Department may require the Contractor to be represented by common counsel. Counsel for the Contractor may, at the Contractor's expense, be associated with the Department representatives in any such claim or litigation.
 - (k) The provisions of Subpart 970.71 are not applicable to costs incurred under and in accordance with this clause and subparagraph (d)(4) of the clause entitled "ALLOWABLE COSTS AND FEE."

I.91 DEAR 970.5204-33 PRIORITIES AND ALLOCATIONS (JUN 1987)

The Contractor shall follow the rules and procedures of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed for contract performance.

I.92 DEAR 970.5204-38 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (APR 1984)

Except as approved by the Contracting Officer, the Contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the Contracting Officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

I.92 (A) DEAR 970.5204-39 Acquisition and Use of Environmentally Preferable Products and Services (Oct 1995)

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- (a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuance:
 - (1) Executive Order 12873 of October 20, 1993, entitled "Federal Acquisition, Recycling and Waste Prevention."
 - (2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub L. 94-580, 90 Stat. 2822).
 - (3) Title 40 of the Code of Federal Regulations, Subchapter I, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials.
 - (4) "U. S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials" and related guidelines documents(s) as they are identified in writing by the Department.
 - (b) The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction (e.g. in a specified format) from the Contracting Officer.
 - (c) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans and program guidance with the DOE recycling point of contact, who shall be identified by the Contracting Officer. Reports required pursuant to paragraph (b) of this clause, shall be submitted through the DOE recycling point of contact. [60 FR 47492, Sept. 13, 1995]

I.93 DEAR 970.5204-41 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984) (DEVIATION)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor 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.

I.94 DEAR 970.5204-42 KEY PERSONNEL (APR 1984)

It having been determined that the employees identified in Appendix J, Key Personnel, or persons approved by the Contracting Officer as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this contract, the Contractor agrees to assign such employees or persons to the performance of the work under this contract and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the contract, the Contractor shall, with the approval of the Contracting Officer, replace such employee with an employee of substantially equal abilities and qualifications.

I.95 DEAR 970.5204-43 OTHER GOVERNMENT CONTRACTORS (APR 1984) (DEVIATION)

The Government may undertake or award other contracts for additional work or services. The Contractor agrees to fully cooperate with such other contractors and Government employees and carefully fit its own work to such other work as may be directed by the Contracting Officer. 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 except as provided in the clause entitled "OVERSIGHT RESPONSIBILITY" or other provisions of the contract. If the DOE determines that the Contractor's activities may interfere with another DOE Contractor, the Contracting Officer shall so notify the Contractor, and the Contractor shall comply with any instructions the Contracting Officer may provide.

NOTE: The clause in item (12) below (FAR 52.215-1) has been deleted from the Federal Acquisition Regulation and is not required to be flowed down to subcontractors.

I.95 (A) DEAR 970,5204-44 Flowdown of Contract Requirements to Subcontracts (Oct 1995)

- (a) The contractor shall include the clause in paragraph (b) of this clause in appropriate subcontracts.
 - (1) To the extent that the clause is included in this prime contract, the contractor shall comply with that portion of the clause that directs application to subcontracts.
 - (2) To the extent that the clause is not included in this prime contract, or where it is included but there is no instructions for treatment in subcontracts, the contractor shall include the clause in accordance with applicable regulatory guidance which would apply if the subcontract were a prime contract with the Federal government.
 - (3) In all cases, where a regulation is cited, the contractor shall comply with the regulation in administration of the related clause.
- (b) Clauses and related regulations.
 - (1) *Air Transportation by U. S. Flag Carriers.* Clause at FAR 52.247-63.



- (2) *Anti-Kickback Act of 1986*. Clause at FAR 52.203-7.
- (3) *Clean Air and Water*. Clause at FAR 52.223-2, and follow the requirements of FAR 23.1.
- (4) *Contract Work Hours and Safety Standards Act*. Clause at FAR 52.2224, and follow the requirements of FAR 22.3.
- (5) *Cost and Pricing Data*. Clause at 48 CFR (DEAR) 970.5204-24.
- (6) *Cost and Schedule Control System*. Clause at 48 CFR (DEAR) 970.520450.
- (7) *Cost Accounting Standards*. Clause at FAR 52.230-2, as prescribed in 48 CFR (DEAR) 970.30,
- (8) *Davis-Bacon Act*. Clauses as directed at FAR 22.407, and follow the requirements of FAR 22.4 to the same extent that they would apply if the subcontract has been directly awarded by DOE. 48 CFR (DEAR) Subpart 922.4 and 48 CFR (DEAR) 970.2273 provide guidance to assist in determining the applicability of these regulations.
- (9) *Employment of the Handicapped*. Clause at FAR 52.222-36, and follow the requirements of FAR 22.14.
- (10) *Environmental and Occupational Safety and Health*. Clause as prescribed in 48 CFR (DEAR) 970.2303-2.
- (11) *Equal Employment Opportunity*. Clause as prescribed in FAR 22.810, as applicable, and follow the requirements of FAR 22.8, 48 CFR (DEAR) 922.8, E.O. 11246 and 40 CFR Part 60.
- (12) *Examination of Records by Comptroller General*. Clause at FAR 52. 215-1.
- (13) *Foreign Travel*. Clause at 48 CFR (DEAR) 970.5204-52.
- (14) *Nuclear Hazards Indemnity*. Clause at 48 CFR (DEAR) 970.2870.
- (15) *Organizational Conflicts of Interest*. Clause at 48 CFR (DEAR) 952.209-72.
- (16) *Patent Data and Copyright*. Appropriate clauses as required by 48 CFR (DEAR) Parts 927 and 970.
- (17) *Printing*. Clause at 48 CFR (DEAR) 970.5204-19.
- (18) *Privacy Act*. Clause at FAR 52.224-1 and FAR 52.224-2, and follow the requirements of FAR 24.1.
- (19) *Record Retention*. Clause at 48 CFR (DEAR) 970.5204-9.
- (20) *Safeguarding Classified Information*. Appropriate clauses prescribed at 48 CFR (DEAR) 970.0404.
- (21) *Service Contract Act*. Clauses at FAR 52.222-40 and FAR 52.222-41.



- (22) *Small Business and Small Disadvantaged Business Concerns.* Clause at FAR 52.219-9.
 - (23) *Special Disabled and Vietnam Era Veterans.* Clause at FAR 52.222-35, and follow the requirements of FAR Subpart 22.13.
 - (24) *Taxes.* Clause similar to 48 CFR (DEAR) 970.5204-23 cost reimbursement. An appropriate tax clause covering tax matters should also be included in fixed-price subcontracts.
 - (25) *Termination.* Appropriate clause or clauses as set forth at FAR 52.249-1 through 52.249-14.
- (c) *Other.* Omission from the foregoing list of contract flowdown provision shall not be construed as waiving a requirement for the contractor to comply with a flowdown requirement for subcontracts appearing elsewhere in this contract. [60 FR 49517, Sept 26, 1995]

I.96 DEAR 970.5204-45 TERMINATION (APR 1984) (DEVIATION)

- (a) This contract shall continue until the date shown in the clause entitled "TERM OF CONTRACT" unless sooner terminated in accordance with the provisions which follow:
 - (1) The performance of work under this contract may be terminated by the Government in whole, or from time to time in part, (i) whenever the Contractor shall default in performance, and shall fail to cure the fault or failure within such period as the Contracting Officer may allow after receipt from the Contracting Officer of a notice specifying the fault or failure, or (ii) whenever, for any reason, the Contracting Officer shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying whether termination is for default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other. If, after notice of termination under the provisions of (a)(1)(i) above, it is determined for any reason that the Contractor was not in default, such notice of default shall be deemed to have been issued pursuant to (a)(1)(ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.
 - (2) Upon receipt of notice of termination, in accordance with (1) above, the Contractor shall, to the extent directed in writing by the Contracting Officer, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by the Contracting Officer, to cancel promptly and settle with the approval of the Contracting Officer, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.
- (b) Upon the termination of this contract, full and complete settlement of all claims of the Contractor and of DOE arising out of this contract shall be made as follows:
 - (1) The Government shall have the right in its discretion to assume sole responsibility for any or all obligations, commitments, and claims that the Contractor may have undertaken or incurred, the cost of which are allowable in accordance with the provisions of this contract; and the Contractor

shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and; take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government any rights and benefits the Contractor may have under or in connection with such obligations, commitments, or claims.

- (2) The Government shall treat as allowable costs all expenditures made in accordance with and allowable under the clause entitled "ALLOWABLE COSTS AND FEE," not previously so allowed or otherwise credited for work performed prior to the effective date of termination, together with expenditures as may be incurred for a reasonable time thereafter with the approval of, or as directed by, the Contracting Officer.
 - (3) The Government shall treat as allowable costs, to the extent not included in (b)(2) above, the costs of settling and paying claims arising out of the termination of work under orders, subcontracts, and commitments as provided in (a)(2) above.
 - (4) (DEVIATION) The Government shall treat as allowable costs the reasonable costs of settlement, including accounting, legal, clerical, expenses as provided for in Appendix A, Personnel Costs and Related Expenses, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the termination of the contract and for the termination and settlement of orders and subcontracts thereunder, together with such further expenditures made by the Contractor after the date of termination for the protection or disposition of Government property as are approved or required by the Contracting Officer; provided, however, that if the termination is for default of the Contractor, there shall not be included any amount for preparation of the Contractor's settlement proposal.
 - (5) (DEVIATION) If performance of work under this contract is terminated in whole or in part by the Government, the fees of the Contractor shall be prorated to and including the effective date of such termination. In addition, if the termination is for the convenience of the Government, the Contractor shall be paid a fixed fee in an amount to be agreed upon as compensation for its services in closing out the work under this contract after the effective date of such termination. The additional fixed fees is to be negotiated as soon as practicable after service of notice of termination, shall take into account the estimate of the cost of the services and managerial effort to be rendered under this clause after the effective date of termination, and shall be provided for in a supplement or amendment to this contract prior to final settlement hereunder. Pending agreement as to the amount of such fees, the Contractor shall diligently proceed with the performance of the services required under this clause. No additional fees will be paid if the contract is terminated due to the default of the Contractor. In the event of a partial termination by the Government, an equitable adjustment shall be made in the fees if such termination results in a material decrease in the level of the Contractor's management effort. Any failure to agree on the right to or the amount of any adjustment shall be deemed a dispute within the purview of the clause hereof entitled "DISPUTES."
 - (6) The obligation of the Government to make any of the payments required by this clause or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the Contractor.
- (c) Prior to final settlement, the Contractor shall furnish a release as required in the clause entitled "PAYMENTS AND ADVANCES" and account for Government-owned property as may be required

by the Contracting Officer: provided, however, that unless the Contracting Officer requires an inventory, the maintenance and disposition of the records of Government-owned property in accordance with the clause entitled "ACCOUNTS, RECORDS AND INSPECTION" shall be accepted by the Contracting Officer as full compliance with all requirements of this contract pertaining to an accounting for such property.

I.96 (B) DEAR 970,5204-40 Technology Transfer Mission (JAN 1996) (Deviation)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority.

- (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of P.L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.
- (2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel, assignments, and licensing in accordance with this clause.
- (3) In pursuing the technology transfer mission, the contractor is further authorized to work with and to utilize the services of Lockheed Martin Energy Systems, to the extent available, in conducting any and all of the activities set forth in (a)(2) above.

(b) Definitions.

- (1) Contractor's Laboratory Director means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

- (2) Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.
- (3) Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.
- (4) Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:
 - (i) Purpose;
 - (ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;
 - (iii) Schedule for the work; and
 - (iv) Cost and resource contributions of the parties associated with the work and the schedule.
- (5) Assignment means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.
- (6) Laboratory Biological Materials means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.
- (7) Laboratory Tangible Research Product means tangible material results of research which
 - (i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;
 - (ii) are not materials generally commercially available; and
 - (iii) were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

- (8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.
- (c) Allowable Costs.
- (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the Contracting Officer.
 - (2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Litigation and Claims" of this Contract.
- (d) Conflicts of Interest--Technology Transfer. The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to other persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the Contracting Officer for review and approval within sixty (60) days after execution of this contract. The

Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

- (1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;
- (2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;
- (3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

- (4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;
 - (5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;
 - (6) Notify the Contracting Officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;
 - (7) Except as provided elsewhere in this Contract, obtain the approval of the Contracting Officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;
 - (8) Obtain the approval of the Contracting Officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any person who has been a Laboratory employee within the previous two years or to the company in which he or she is a principal; and
 - (9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements.
 - (10) Notify DOE prior to evaluating a proposal by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.
- (e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.
- (f) U.S. Industrial Competitiveness.
- (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference In such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract:
 - (i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

- (ii) (A) whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.
 - (2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the Contracting Officer. The Contracting Officer shall act on any such requests for approval within thirty (30) days.
 - (3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).
- (g) Indemnity--Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the Contracting Officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.
- (h) Disposition of Income.
- (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.
 - (2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the

Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

- (3) The Contractor shall establish subject to the approval of the Contracting Officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the Contracting Officer.
- (i) **Transfer to Successor Contractor.** In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the Contracting Officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the Contracting Officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the Contracting Officer.
- (j) **Technology Transfer Affecting the National Security.**
 - (1) The Contractor shall notify and obtain the approval of the Contracting Officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.
 - (2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.
 - (3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.
- (k) **Records.** The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the Contracting Officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of

the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause.

Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

- (1) Reports to Congress. To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the Contracting Officer on or before October 1st of each year.
- (m) Oversight and Appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the Contracting Officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.
- (n) Technology Transfer Through Cooperative Research and Development Agreements. Upon approval of the Contracting Officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director or his designee may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.
 - (1) Review and Approval of CRADAs
 - (i) Except as otherwise directed in writing by the Contracting Officer, each JWS shall be submitted to the Contracting Officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the Contracting Officer in his approval determination.
 - (ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.
 - (iii) Within ninety (90) days after submission of a JWS, the Contracting Officer shall approve, disapprove or request modification to the JWS. If a modification is required, the Contracting Officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The Contracting Officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS.
 - (iv) Upon approval of a JWS, the Contractor's Laboratory Director or designee may submit a CRADA, based upon the approved JWS, to the Contracting Officer. The Contracting Officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the Contracting Officer requests a modification of the

CRADA, an explanation of such request shall be provided to the Laboratory Director or designee.

- (v) Except as otherwise directed in writing by the Contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the Contracting Officer. The Contractor may submit its proposed CRADA to the Contracting Officer at the time of submitting its proposed JWS or any time thereafter. However, the Contracting Officer is not obligated to respond under paragraph (n)(1)(iv) of this clause until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.
- (2) Selection of Participants The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:
- (i) Give special consideration to small business firms, and consortia involving small business firms;
 - (ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;
 - (iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and
 - (iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.
- (3) Withholding of Data
- (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.
 - (ii) Unless otherwise expressly approved by the Contracting Officer in advance for a specific CRADA, the Contractor agrees, at the request of the Contracting Officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the

restrictions against private use and further dissemination, along with the expiration date of such restrictions.

- (iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) Work For Others and User Facility Programs

- (i) WFO and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.
- (ii) Where the Contractor believes that the transfer of technology to the U. S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the Contracting Officer for an exception to the Class Waivers.
- (iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) Conflicts of Interest

- (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:
 - (A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee
 - (1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

- (2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or
- (B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.
 - (ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the Contracting Officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.
 - (iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the Contracting Officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the Contracting Officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.
- (o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the Contracting Officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

I.97 DEAR 970.5204-52 FOREIGN TRAVEL (APR 1984)

- (a) Foreign travel, when charged directly, shall be subject to the prior approval of the Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.
- (b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel Form, and when applicable, include a notification of proposed soviet-bloc travel.

I.98 DEAR 970.5204-58 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (AUG 1992)

- (a) Program Implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

- (b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) Subcontracts. (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707.
 - (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
 - (3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

I.99 DEAR 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (JAN 1993)

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

I.100 DEAR 970.5204-61 COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS (DEC 1993)

- (a) "Definitions."

"Conviction," as used in this section means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction due to a plea of nolo contendere.

"Costs" includes, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the Contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers and directors; and any similar costs incurred before, during, and after commencement of a proceeding which bears a direct relationship to the proceeding.

"Fraud," as used herein, means

- (i) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents,
- (ii) Acts which constitute a cause for debarment or suspension under FAR 9.406-2(a) and FAR 9.407-2(a), and
- (iii) Acts which violate the False Claims Act, 31 U.S.C. 3729-3731, or the Anti-Kickback Act, 41 U.S.C. 51 and 54.

"Penalty" does not include restitution, reimbursement, or compensatory damages.

"Proceeding" includes an investigation.

- (b) Except as otherwise described in this section, costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government, or a State, local or foreign Government, are not allowable if the proceeding relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the Contractor, and results in any of the following dispositions:
 - (1) In a criminal proceeding, conviction.
 - (2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of Contractor liability.
 - (3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.
 - (4) A final decision by an appropriate Federal official to debar or suspend the Contractor, to rescind or void a contract, or to terminate a contract for default by reason of a violation of or failure to comply with a law or regulation.
 - (5) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraph (b)(1), (2), (3) or (4) of this section.
 - (6) Not covered by paragraphs (b)(1) through (5) of this section, but where the underlying alleged Contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (5) of this section.
- (c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the Contractor and the Federal Government, then the costs incurred by the Contractor in connection with such proceeding that are otherwise unallowable under paragraph (b) of this section may be allowed to the extent specifically provided in such agreement.
- (d) If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign Government, the Contracting Officer may allow the costs incurred in such proceeding, provided the Procurement Executive determines that the costs were incurred as a result of compliance with specific term or condition of the contract, or specific written direction of the Contracting Officer.

- (e) Costs incurred in connection with a proceeding described in paragraph (b) of this section, but which are not made unallowable by that paragraph, may be allowed by the Contracting Officer only to the extent that:
 - (1) The total costs incurred are reasonable in relation to the activities required to deal with the proceedings and the underlying cause of action;
 - (2) Payment of the costs incurred, as allowable and allocable contract costs, is not prohibited by any other provision(s) of this contract;
 - (3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and
 - (4) The amount of the costs allowed does not exceed 80 percent of the total costs incurred and otherwise allowable under the contract. Such amount that may be allowed (up to 80 percent limit) shall not exceed the percentage determined by the Contracting Officer to be appropriate, considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. However, where an agreement reached under paragraph (c) of this section, or a determination made under paragraph (d) of this section, explicitly considered this 80 percent limitation, then an amount up to the full amount of costs specifically provided in such agreement or determination may be allowed.
- (f) Contractor costs incurred in connection with the defense of suits brought by employees or ex-employees of the Contractor under section 2 of the Major Fraud Act of 1988, including the cost of all relief necessary to make such employee whole, where the Contractor was found liable or settled, are unallowable.
- (g) Costs which may be unallowable under this clause, including directly associated costs, shall be differentiated and accounted for by the Contractor so as to be separately identifiable. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Contracting Officer shall generally withhold payment and not authorize the use of funds advanced under the contract for payment of such costs. However, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.
- (h) For proceedings against the Contractor in which the Contractor is alleged to have violated the False Claims Act, 31 U.S.C. 3730, and to the extent paragraph (b) is not otherwise applicable:
 - (1) any costs of judgments against the Contractor, and the associated litigation costs, or, except as authorized by the Contracting Officer, costs of settlements made by the Contractor, and the associated litigation costs, are unallowable; and
 - (2) unless the Department of Justice intervenes, the Contracting Officer may provisionally allow all Contractor costs, including litigation costs, until conclusion by settlement or judgement.

I.101 DEAR 970.5204-62 ENVIRONMENTAL PROTECTION (MAR 1994)

- (a) In addition to complying with the requirements set forth in the "CLEAN AIR AND WATER" clause, in the performance of this contract the Contractor shall comply, as applicable, with the following, which list is not represented to be free of omissions:
- (1) The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq);
 - (2) The Department of Energy Organization Act (42 U.S.C. 7101 et seq);
 - (3) The Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq);
 - (4) The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq);
 - (5) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq);
 - (6) The Safe Drinking Water Act, as amended (42 U.S.C. 300 et seq);
 - (7) The Toxic Substances Control Act, as amended (15 U.S.C. 2601 et seq);
 - (8) The Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq);
 - (9) The Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401 et seq);
 - (10) The Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq);
 - (11) The Coastal Barrier Resource Act of 1982 (16 U.S.C. 3501 et seq);
 - (12) The Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 et seq);
 - (13) The Low-Level Radioactive Waste Policy Act, as amended (72 U.S.C. 2021 et seq);
 - (14) The Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901 et seq);
 - (15) Pollution Prevention Act of 1990, as amended (42 U.S.C. 13101 et seq);
 - (16) Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. 11001 et seq);
 - (17) Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq);
 - (18) Energy Policy Act of 1992 (Public Law 102-486 and 3 U.S.C. 301)
 - (19) Energy Policy and Conservation Act (42 U.S.C. 6201 et seq);
 - (20) Code of Federal Regulations, Title 10 (Energy), parts involving environmental protection and related requirements for contractors;

- (21) DOE Directives (i.e. Orders and Notices) numbered in the series between 1540 and 1541 (Materials), between 5000.2 and 5000.4 (Unusual Occurrence Reporting), in the series between 5400 and 5500 (Environmental Quality and Impact), and between 5820.1 and 5820.3 (Radioactive Waste Management), and involving requirements for contractors; and
 - (22) Other, Federal and non-Federal, environmental protection laws, codes, ordinances, Executive Orders, regulations, and requirements in DOE Directives, as identified in writing by the Contracting Officer. Errors in or omissions from the list of laws above, or failure to identify a requirement having the force and effect of law, shall not be construed as waiving a requirement for the Contractor to comply with such law or requirement nor shall they form the basis for a defense by the Contractor in an administrative, civil, or criminal proceeding, including providing a basis for a claim for the allowability of a fine, penalty, or other cost associated with failure to comply with such law or requirement.
- (b) The Contractor shall assist the DOE in complying, as applicable, with the following:
- (1) The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq);
 - (2) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq);
 - (3) The Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq);
 - (4) The Noise Control Act of 1972, as amended (16 U.S.C. 470 et seq);
 - (5) The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq);
 - (6) The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1273 et seq);
 - (7) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq);
 - (8) Executive Order 11988 of May 24, 1977, Floodplain Management;
 - (9) Executive Order 11990, of May 24, 1977, Protection of Wetlands;
 - (10) Executive Order 12088 of October 13, 1978, Federal Compliance with Pollution Control Standards;
 - (11) Executive Order 12580 of January 23, 1987, Superfund Implementation;
 - (12) Executive Order 12843 of April 23, 1993, Procurement Requirements and Policies for Ozone-Depleting Substances;
 - (13) Executive Order 12843 of April 23, 1993, Requiring Agencies to Purchase Energy Efficient Computer Equipment;
 - (14) Office of Management and Budget (OMB) Circular No. A-106 of December 31, 1974, Reporting Requirements in Connection with the Prevention, Control, and Abatement of Environmental Pollution of Existing Federal Facilities; and

- (15) Other, Federal and non-Federal, environmental protection laws, codes, ordinances, regulations, and DOE Directives, as identified in writing by the Contracting Officer.
- (c) The Contractor shall, with regard to the environmental protection laws, codes, ordinances, Executive Orders, regulations and directives included in or covered by paragraphs (a) and (b) of this clause, set forth appropriate environmental protection requirements in subcontracts with respect to work to be performed on-site at a DOE-owned or -leased facility.

SUBPART - PATENT CLAUSES

I.102 DEAR 952.227-13 PATENT RIGHTS - PROFIT-MAKING MANAGEMENT AND OPERATING CONTRACTORS WITH TECHNOLOGY TRANSFER AUTHORITY (1995) (DEVIATION)

- (a) Definitions.
 - (1) Invention, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
 - (2) Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
 - (3) Subject Invention, as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.
 - (4) Weapons-related Subject Invention, as used in this clause, means any Subject Invention occurring under work funded by or through the Assistant Secretary for Defense Programs, including Department of Defense and Intelligence Reimbursable Work or the Navy Nuclear Propulsion Program of DOE.
 - (5) Patent Counsel, as used in this clause, means the Department of Energy Counsel for Intellectual Property assisting the DOE contracting activity.
 - (6) DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109-6 or successor regulations.
 - (7) Agency licensing regulations and applicable agency licensing regulations, as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.
 - (8) Exceptional Circumstance Subject Invention means any Subject Invention for which DOE provides the exceptional circumstances finding and analysis in writing under 35 U.S.C. 202(a)(ii) and the procedures of 37 CFR Part 401.3(e).

- (b) Allocations of principal rights.
- (1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) below.
 - (2) Retention by the Contractor. The DOE has granted to the Contractor an Identified Subject Invention Class Waiver to Subject Inventions which are not Exceptional Circumstances or Weapons-related Subject Inventions. Within two (2) years after disclosure to DOE, the Contractor may elect in writing to retain the entire right, title and interest throughout the world to Subject Inventions in accordance with the requirements of said waiver. The right of the Contractor to make such elections is further subject to the invention rights disposition in those treaties or international agreements listed in the Appendix C, Treaties and International Agreements, of this contract, and existing or future class waivers to third parties by DOE such as Work-for-Others, User Facility and Cooperative Research and Development Agreement (CRADA) waivers.
 - (3) Exceptional Circumstances. The DOE has declared the following to be Exceptional Circumstances inventions:
 - (i) Subject Inventions relating to uranium enrichment, including isotope separation;
 - (ii) Subject Inventions relating to storage, transportation, and disposal of civilian high level nuclear waste or spent nuclear fuel;
 - (iii) Subject Inventions related to subject matter that is classified or sensitive under Section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168 (1982));
 - (iv) Subject Inventions related to funding agreements involving the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI) in view of MOUs providing free licenses to their member entities;
 - (v) Subject Inventions relating to work by DOE National Laboratories relating to the Advanced Battery Program conducted by the United States Advanced Battery Consortium (USABC) under Cooperative Agreement DE-FC02-91CE50336; and
 - (vi) Subject Inventions relating to the DOE Steel and Metals Initiative Program as funded by P.L. 99-199 and P.L. 99-591.

DOE reserves the right to unilaterally amend this contract to add or delete Exceptional Circumstance Subject Inventions that may in the national interest, be designated by the Secretary of Energy.

- (4) International agreements and treaties. DOE reserves the right to unilaterally amend this contract by amending the listing in the Appendix C, Treaties and International Agreements, to add specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract. The added treaties or international agreements will affect only those Subject Inventions made after the date of the amendment. Upon award of this contract, the

Contracting Officer shall provide a list of bilateral and multilateral international agreements to the Contractor.

- (5) Right to Petition. The Contractor, or the employee-inventor, with authorization from the Contractor; pursuant to applicable laws and regulations, may petition for waiver of the Government's rights with respect to Subject Inventions not electable by the Contractor under the terms of this paragraph (b).
 - (6) Filing of applications. The Contractor will file its initial patent application on a Subject Invention to which it elects to retain title within one year after election of the title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
 - (7) Extensions of time. Requests for extensions of time for disclosure, election, and filing may, for good cause shown in writing, be granted by Patent Counsel.
 - (8) The Contractor agrees to include within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by the U.S. Department of Energy. The Government has certain rights in the invention."
 - (9) Within two (2) months after receiving a filing receipt from the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any Subject Invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.
 - (10) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.
 - (11) Upon request, the Contractor shall furnish the DOE an irrevocable power to inspect and make copies of the patent application file.
- (c) Minimum rights acquired by the Government.
- (1) With respect to each Subject Invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:
 - (i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

- (ii) The Contractor agrees that with respect to any Subject Invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations to require the Contractor, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that--
 - (A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;
 - (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensee;
 - (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensee; or
 - (D) Such action is necessary because the agreement required by subparagraph (f)(3) of the clause entitled "TECHNOLOGY TRANSFER MISSION" has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.
- (iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) above. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.
- (iv) The Contractor agrees, when licensing a Subject Invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a Subject Invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.
- (v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) above in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) above,

and for the reporting of utilization information as required by subparagraph (c)(1)(iii) above, whenever the instrument transfers principal or exclusive rights in a Subject Invention.

- (vi) The Contractor will attempt to achieve early commercialization of each Subject Invention through its Licensees in order to make the benefits of the waived invention available to the public in the shortest practicable time.
- (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.
- (d) Minimum rights to the Contractor.
 - (1) The Contractor may request from DOE the right to reserve a revocable nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the Subject Invention within the times specified in subparagraph (e)(2) below. If approved, the Contractor's license would extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license would be transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
 - (2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 - (3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.
 - (4) If the Contractor is to file a foreign patent application on a Subject Invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.
- (e) Invention identification, disclosures, and reports.

- (1) The Contractor shall establish and maintain active and effective procedures to assure that Subject Inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception or first actual reduction to practice, whichever occurs first, in the performance of work under this contract. This reporting requirement also applies to Subject Inventions of participants in any CRADA in which the Contractor is a party. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.
- (2) The Contractor shall disclose each Subject Invention to the DOE Patent Counsel within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a Subject Invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
- (3) The Contractor shall furnish the Contracting Officer the following:
 - (i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing Subject Inventions during that period, and certifying that all Subject Inventions have been disclosed (or that there are no such inventions) and that the procedures required by subparagraph (e)(1) above have been followed.
 - (ii) A final report, within 3 months after completion of the contracted work listing all Subject Inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.
- (4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each Subject Invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (e) above, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. This

disclosure format should require, as a minimum, the information required by subparagraph (2) above.

- (5) The Contractor agrees subject to FAR 27.302(j) that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.
 - (6) The Contractor agrees to execute or to have executed and promptly deliver to the DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (j)(1), below, to enable the Government to obtain patent protection throughout the world in that Subject Invention.
- (f) Examination of records relating to inventions.
- (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--
 - (i) Any such inventions are Subject Inventions;
 - (ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;
 - (iii) The Contractor and its inventors have complied with the procedures.
 - (2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a Subject Invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.
 - (3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.
- (g) Subcontracts.
- (1) The Contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Contractor shall include the clause at 48 CFR 952.227-13 (suitably modified to identify the parties). The Contractor shall

not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

- (2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor--
 - (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
 - (ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.
 - (3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
 - (4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.
 - (5) The Contractor shall identify all Subject Inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the Contracting Officer, promptly upon identification of the inventions.
- (h) Atomic energy.
- (1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
 - (2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of paragraph (h)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.
- (i) Publication.
- It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE, patent approval or guidance for release or publication of such information shall be secured from Patent Counsel prior to any such release or publication.
- (j) Forfeiture of rights in unreported Subject Inventions.

- (1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any Subject Invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:
 - (i) Files or causes to be filed a United States or foreign patent application thereon; or
 - (ii) Submits the final report required by paragraph (e)(3)(ii) of this clause, whichever is later.
- (2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in paragraph (j)(1) of this clause, the Contractor:
 - (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or
 - (ii) Contending that the invention is not a Subject Invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or
 - (iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.
- (3) Pending written assignment of the patent application and patents on a Subject Invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the "DISPUTES" clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(k) Facilities License.

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at any Government facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(l) Rights Governed by Other Agreements.

Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements,

notwithstanding any disposition of rights contained in this contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work-for-Others, User Facility and CRADA class waivers) or individually negotiated waiver which applies to the agreement and shall take precedence over any disposition of rights in this contract. Where an invention is conceived in the course of work under this contract, but is later reduced to practice under a Work-for-Others or CRADA agreement, rights to such invention shall be governed by the provisions incorporated, with DOE approval, in the Work-for-Others or CRADA agreement. Nothing in this paragraph shall abrogate the rights of third parties under any agreement approved by DOE and entered into prior to any such DOE class waiver.

(m) Assignment/Licenses.

- (1) The Contractor agrees that rights to a Subject Invention in the United States may not be assigned without the approval of DOE.
- (2) The Contractor agrees that it will make efforts that are reasonable under the circumstances to attract licensees of Subject Inventions that are small business firms and that it will give preference to a small business firm when licensing a Subject Invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to Practical Application as any plans or proposals from applicants that are not small business firms; provided that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that DOE may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with DOE when the review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this subparagraph (m)(2).

(n) Patent Functions.

The Contractor upon written request of the Contracting Officer or Patent Counsel will use reasonable efforts to support the Patent Counsel in carrying out patent-related functions for work arising out of the contract, which functions include but are not limited to prosecution of patent applications where the Government obtains title, determination of questions of novelty, patentability, prior art searches and inventorship.

(o) Educational Awards Subject to 35 U.S.C. 212.

The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area or technology related to Exceptional Circumstance technology, or which is subject to treaties or international agreements as set forth in paragraphs (b)(2), (b)(3), and (b)(4) of this clause or agreements other than funding agreements. The Contracting Officer shall have the right to disapprove such placement.

I.103 FAR 52.227-1 AUTHORIZATION AND CONSENT (APR 1984) (DEVIATION)

- (a) (DEVIATION) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) (DEVIATION) The Contractor agrees to include, and require inclusion of, the clause, at 48 CFR 52.227-1 suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services) expected to exceed \$25,000; however, omission of this clause from any subcontract, under or over \$25,000, does not affect this authorization and consent.
- (c) In the case of suit or potential suit in copyright infringement, the Contractor may request authorization and consent in copyright from DOE. Programmatic necessity shall be a major consideration in grant of authorization and consent.

I.104 FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (APR 1984) (DEVIATION)

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) (DEVIATION) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

I.105 FAR 52.227-6 ROYALTY INFORMATION (APR 1984)

- (a) Cost of charges for royalties. If any royalty payments are directly involved in the contract or are reflected in the contract price to the Government, the Contractor agrees to report to the Contracting Officer the following information relating to each separate item of royalty or license fee:
 - (1) Name and address of licensor.
 - (2) Date of license agreement.
 - (3) Patent numbers, patent application serial numbers, or other bases on which the royalty is payable.

- (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.
 - (5) Percentage or dollar rate of royalty per unit.
 - (6) Unit price of contract item.
 - (7) Number of units.
 - (8) Total dollar amount of royalties.
- (b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer, the Contractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.
- (c) The Contractor shall follow the procedures of 48 CFR 27.204 in all subcontracting.

I.106 FAR 52.227-3 PATENT INDEMNITY (DEVIATION)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of U.S. Letters Patent (except U.S. Letters Patent issues upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with the DOE Acquisition Regulations.

I.107 RIGHTS IN DATA - TECHNOLOGY TRANSFER ACTIVITIES (ACQUISITION LETTER NO. 91-7) (DEVIATION)

- (a) Definitions.
- (1) "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.
 - (2) "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 does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
 - (3) "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.
 - (4) "Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

- (5) "Technical data and information having commercial value" means technical data and related commercial or financial information which is generated or acquired by the Contractor and possessed by the Contractor, and whose disclosure the Contractor certifies to DOE would cause competitive harm to the commercial value or use of the information or data [10 CFR 1004.3(e)(4)].
 - (6) "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 such computer software.
 - (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, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
 - (8) "Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g) in this clause.
 - (9) "Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, including minor modifications of such computer software, as set forth in a Restricted Rights Notice of paragraph (h) in this clause.
 - (10) "Proprietary information," as used in this clause, means information which embodies (i) trade secrets or (ii) commercial or financial information which is privileged or confidential under the Freedom of Information Act [5 USC 552 (b)(4)], either of which is developed at private expense outside of this Contract and which is marked as proprietary information.
- (b) Allocation of rights.
- (1) Except as otherwise herein provided and as may be otherwise expressly provided or directed in writing by the Contracting Officer, the Government shall have:
 - (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
 - (ii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times (for which inspection the proper facilities shall be afforded DOE by the Contractor and its subcontractors);
 - (iii) 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, provided that nothing contained in this paragraph shall require the Contractor to actually deliver any technical data or computer software, the delivery of which is excused by this "RIGHTS IN DATA - TECHNOLOGY TRANSFER ACTIVITIES" clause;

- (iv) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, proprietary information of third parties, and except for technical data and computer software pertaining to items of standard commercial design, and further, subject to the withholding provisions for protected CRADA information in accordance with Technology Transfer actions under 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; provided, that 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 (g) hereof ("RIGHTS IN LIMITED RIGHTS DATA") or paragraph (h) hereof ("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 its limited rights data and restricted computer software in accordance with the provisions of this clause;
 - (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; and
 - (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright in works subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.
 - (iv) The right to withhold proprietary information of third parties in accordance with the subparagraph (i) of this clause.

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.

Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) Copyright (General).

- (1) The Contractor agrees not to mark, register or otherwise assert a copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) below.
- (2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) hereof, the Contractor agrees not to include in the data delivered under this 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 (d) below. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data 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 data prior to its delivery.
- (3) To "assert copyright" means to claim ownership in all rights in the material copyrighted, subject to the relevant Government use license, including the right to secure Federal registration of the copyright in said materials.

(d) Copyrighted works (scientific and technical articles).

The Contractor shall have the right to assert, without prior approval of the Contracting Officer, copyright subsisting 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. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license 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.

(e) Copyrighted works (other than scientific and technical articles).

- (1) The Contractor shall have the right to assert copyright subsisting in training and educational materials. The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:
 - (i) Contractor Request to Assert Copyright.
 - (A) For data other than scientific and technical articles, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. Each request by the Contractor to be complete must include: (1) the identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for

dissemination purposes, (2) the program under which it was funded, (3) whether the data is subject to an international treaty or agreement, (4) whether the data is subject to export control, (5) a statement that the Contractor plans to commercialize the data within five (5) years of obtaining permission to assert copyright, and (6) for data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization. For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

- (B) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE is expressly withheld. Such excepted categories include data whose release (1) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (2) would not enhance the appropriate transfer or dissemination and commercialization of such data, (3) would have a negative impact on U.S. industrial competitiveness, (4) would prevent DOE from meeting its obligations under treaties and international agreements, or (5) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Intellectual Property. Where data are determined to be under an export control restriction, the Contractor may still obtain permission to assert copyright in such restricted data for purposes of limited commercialization within the constraints provided by the export control statutes and regulations subject to the provisions of this clause. However, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within the above excepted categories and permission to assert copyright will not be granted by DOE for those data. Additionally, the rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the Contracting Officer.

- (ii) DOE Review and Response to Contractor's Request.

The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold

DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond and the reasons therefor.

- (iii) Permission for Contractor to Assert Copyright.
 - (A) For computer software, the Contractor shall furnish to the entity designated by DOE to serve as the DOE centralized software distribution and control point, at the time permission to assert copyright is given under (ii) above: (1) an abstract describing the software suitable for publication, (2) the source code for each software program, and (3) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the above-identified DOE-designated contractor may provide a technical description of the software in an announcement identifying its availability from the copyright holder.
 - (B) Unless otherwise directed by the Contracting Officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (ii) above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.
 - (C) For a period of five (5) years beginning on the date the Contractor is given permission to assert copyright in data, 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, and perform publicly and display publicly, by or on behalf of the Government. Subject to DOE approval, the five-year period is renewable for successive five-year periods. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.
 - (D) After the five (5) year period set forth in (C) above, or if, prior to the end of such period, the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, 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, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.
 - (E) Whenever the Contractor obtains permission to assert copyright in data, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgement of the Government sponsorship and license rights of paragraphs (C) and (D) above. Such action shall

be taken when the data are delivered to the Government, published, licensed, or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgement of Government sponsorship and license rights shall be as follows:

NOTICE: The Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly. Beginning five (5) years after (date permission to assert copyright was obtained) the Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY INFORMATION, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

- (F) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the 5-year period set forth in subparagraph (e)(1)(i)(A) above, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(i)(A) above. Before licensing under this paragraph (F), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 - "APPEALS".
- (G) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee and which exceeds DOE Program needs, except as expressly provided in writing by the Contracting Officer. Maintenance is defined as work to upgrade and/or improve the copyrighted data. The Contractor may use its net royalty income to effect such maintenance costs.
- (H) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign

the copyright to the Government so that the Government can distribute the data to the public.

(f) Subcontracting.

- (1) The Contractor agrees to use a Rights in Data clause as directed by the Contracting Officer in subcontracts having as a purpose the conduct of research, development, and demonstration work and in subcontracts for supplies, where needed.
- (2) It is the responsibility of the Contractor to obtain from its subcontractors data 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 for 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.

(g) Rights in Limited Rights Data.

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, 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 below. 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 (and Purchase Order/Subcontract No. _____ if applicable) 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) 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;
- (b) 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 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; and

- (c) 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.

This Notice shall be marked on any reproduction of this data in whole or in part.

(END OF NOTICE)

(h) Rights in Restricted Computer Software.

- (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, 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 Government Contract No. _____ (and subcontract _____ if appropriate). 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 FAR 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 in lieu thereof:

RESTRICTED RIGHTS NOTICE--SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Contract No. _____ (subcontract No. _____ if appropriate) with _____ (name of Contractor or subcontractor).

(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 rights 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, with unlimited rights, unless the Contractor includes the following statement with such copyright notice: "Unpublished -- rights reserved under the Copyright Laws of the United States."
- (i) Proprietary Information of Third Parties

It is recognized that the Contractor, from time to time, has a need to have furnished proprietary information of third parties in the performance of the work under the Contract. The Contractor will use a Proprietary Information Agreement, approved by the Contracting Officer, that sets forth the rights and obligations of the Contractor (including minimum rights of the Department as provided therein) in such proprietary information consistent with the Contract. The Government shall have the right of access to inspect at the Contractor's facility any proprietary information of third parties furnished to the Contractor in the performance of work under the Contract for: (1) evaluation purposes, i.e., (a) evaluating whether the Contractor should enter into a contract(s) and/or a

collaborating agreement(s) with the owner of such proprietary information, or (b) evaluating work performance, repairs and technology affecting health/safety concerns; (2) conducting limited testing by the Contractor on the furnished proprietary information; or (3) otherwise specifically excepted by the Contracting Officer upon written request by the Contractor. The Government shall have the right of access and delivery of all other third party furnished propriety information upon request of the Contracting Officer.

I.108 RIGHTS TO PROPOSAL DATA

Except as otherwise authorized by the Contracting Officer, the Contractor, pursuant to 48 CFR 27.409(s), shall include the clause of 48 CFR 52.227-23, "RIGHTS TO PROPOSAL DATA (TECHNICAL)," in any subcontract awarded based on consideration of a technical proposal.

I.109 DOE PR 9-9.106 CLASSIFIED INVENTIONS

- (a) The Contractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract in any country other than the United States, an application or registration for a patent without obtaining written approval of the Contracting Officer.
- (b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this contract, the subject matter of which is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Contractor shall by separate letter identify by agency and number, the contract or contracts which require security classification markings to be placed on the application.
- (c) The substance of this clause shall be included in subcontracts which cover or are likely to cover classified subject matter.

PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

APPENDICES

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C	TREATIES AND INTERNATIONAL AGREEMENTS
D	AGREEMENT REGARDING RCRA PERMITS
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Contract No. DE-AC05-96OR22464

APPENDIX A

PERSONNEL COSTS AND RELATED EXPENSES



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1. Introduction

This Personnel Appendix sets forth allowable cost by advanced understanding for the Contractor's human resource management policies and related expenses which have cost implications under the contract. This Appendix identifies those major cost areas deemed reasonable and allowable for reimbursement when incurred in the performance of the Contract work. This cost understanding is subject to all applicable provisions of the main contract.

The Contractor shall select, manage, and direct its work force and apply its human resource policies in general conformity with its private operations and/or standard industrial practice insofar as they are not inconsistent with this Contract. The Contractor shall use effective management review procedures and internal controls to assure that the cost limitations set forth herein are not exceeded, and that areas which require prior approval of the DOE Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.

Either party may request that this Personnel Appendix be revised, and the parties hereto agree to give consideration in good faith to any such request. Revisions to this Personnel Appendix shall be accomplished by executing Reimbursement Authorizations (DOE Form AD-36) as approved by the DOE Contracting Officer or designated representative. When revisions to this Personnel Appendix are agreed upon, revised pages will be issued reflecting such changes and will bear the effective date of such changes and the Reimbursement Authorization number in the upper right-hand corner of each page. The changes will be highlighted using "redline" feature or a similar word processing software feature.

This Appendix A is adopted for the exclusive benefit and convenience of the parties hereto, and nothing herein contained will be construed as conferring any right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. Accordingly, neither this Appendix A nor any part thereof, as amended or modified, will be deemed to constitute a contract between a party hereto and any employee of the contractor or to be consideration for, or an inducement or condition of, the employment of any person, or to afford the basis for any claim or right of action whatsoever against a party hereto by any employee of the contractor or other third party.

Note: In the spirit of contract reform and reinventing government, the parties have agreed to increase the Contractor's latitude for managing overall personnel costs by eliminating many DOE approval requirements and holding the Contractor accountable for controlling and reducing total personnel costs.

Nothing in this agreement precludes the government from making a future determination of unallowable costs based upon the test of reasonableness.

2. Definitions

Adjustment is a change in salary required to establish either internal or external equity.

Adjusted Rate, Adjusted Pay, or Adjusted Base Pay is the rate of pay per hour, per week, or per month, including any premium pay.

Average Rate. The rate which is determined by dividing the weekly straight-time pay by the number of hours worked during the payroll week when an employee works at more than one basic rate or more than one shift differential rate during a payroll week.

Basic Earnings. The amount obtained by multiplying the number of hours worked by the basic rate.

Basic Rate, Job Rate, or Basic Salary. Rate of pay per hour, per week, or per month, exclusive of any premium, but including any cost of living allowances (COLAs) established in any bargaining unit agreements established for each job classification in accordance with the approved wage and salary schedules.

Basic Workweek. A 40-hour workweek.

Change of Classification is the placement of an employee in a new classification due to reassignment without change in salary range.

Contractor. Lockheed Martin Energy Research Corporation.

Corporation. Lockheed Martin Corporation.

DOE. The contracting officer or authorized representative of the contracting officer.

Demotion is the permanent placement of an employee in a lower-rated job classification.

Employee. A person hired by and working for the Contractor.

Exempt Employees. Executive, administrative, and professional employees who are exempt from certain provisions of the Wage and Hour laws. They are on the monthly or semi-monthly payroll.

Merit Increase is an increase in the salary of an employee within the established rate range of the job classification, which is granted consistent with the salary plan.

Overtime Pay. Payment (in addition to straight time) for any hours worked in excess of 8 hours in a 24 hour period or 40 hours within a payroll week for hourly and nonexempt salaried employees (or as otherwise agreed in advance and based on a 40 hour payroll week); and when applicable, payment for required hours worked in excess of 45 hours within a payroll week for eligible exempt salaried employees.

2. Definitions (Cont.)

Nonexempt Employees. Employees who are covered under and are subject to the provisions of the Wage and Hour laws. They are on the weekly salaried or hourly payroll.

Payroll Day. The 24-hour period extending from midnight to midnight. Exception: Payroll day may vary from midnight to the established starting or ending time of the shift.

Payroll Week. Seven consecutive days (168 hours) extending from midnight Sunday to midnight Sunday. Exception: Payroll week may vary from midnight to the established starting or ending time of the shift.

Premium Pay. A payment in addition to straight time pay made for any reason other than overtime; for example, shift differential, week-end premium, etc.

Promotion is the permanent placement of an employee in a higher rated job classification due to an increase in the character or scope of his/her job assignment.

Reevaluation is a change of job level, up or down, through formal evaluation of an existing job.

Regular employee is any full-time or part-time employee on the contractor's payroll, not in a temporary status.

Regular Rate. The straight-time rate at which the hours are worked, or the average rate for the week, whichever is greater.

Regularly Scheduled Shift. The normal hours of working time in each payroll day established for each employee by the Deputy Laboratory Director.

Straight-time Pay or Straight-time Earnings. Amount obtained by multiplying the number of units of time worked by the straight-time rate per unit of time.

Straight-time Rate. The rate of pay per hour, per week, or per month obtained by adding the applicable shift differential rate to the basic rate for the job classification assigned at the time the work is performed.

Termination. Quit, discharge, layoff, retirement, death, and/or removal from the payroll because of disability (as distinguished from disability absence where the employee is not removed from the payroll).

3. Pay Policies

3.1 Bargaining Unit Employee Compensation

- a. The terms and conditions set forth in collective bargaining agreements (CBAs) and modifications thereto and established practices thereunder between the Contractor and recognized bargaining agents for its employees assigned to work under this contract (which involve expenditure of funds) constitute the allowable costs for bargaining unit members' compensation and benefits for reimbursement by DOE. The collective bargaining agreements, incorporated by reference, include those with the following bargaining agents:

ORNL Atomic Trades and Labor Council
AFL-CIO

International Guards Union of America
Local 3

Prior to the negotiation of a new and/or revised CBA, the Contractor will review its negotiation plan with DOE and obtain DOE approval of its cost parameters and/or subsequent changes thereto. Reasonable costs which arise from administration of or pursuant to CBAs shall constitute allowable costs. The specific approval of DOE shall be obtained in the case of unusual items. The contractor will provide to DOE copies of its CBAs as they are entered into or modified and will keep DOE informed as far in advance as practicable of significant labor developments which are potentially precedent setting, may involve high cost, or potential work stoppages.

3.2 Nonrepresented Employee Compensation

3.2.1. Policy/Objectives

The Contractor will implement a compensation program to attract, motivate, retain, and reward a competent work force to effectively accomplish the performance of work under the Contract at a reasonable cost to the government. Professional compensation methodologies and best business practices will be used in the management of the compensation program. Compensation costs will be managed consistent with the Contractor's prevailing operating budget and budget forecast.

3.2.2 Salary Administration

The Contractor shall:

- a. Implement a compensation system with the following components:
 - (1) Market policy for exempt salary structures and base salaries which seek to match average salaries in the competitive market at the beginning of the plan year.
 - (2) Market policy for nonexempt salary structures and base salaries which seek to match average salaries in the competitive market in the middle of the plan year.
 - (3) A job evaluation system for establishing appropriate job worth hierarchy.
 - (4) A performance management system that supports a pay-for-performance compensation philosophy.
 - (5) System for developing a compensation plan.
 - (6) System for planning and controlling compensation expenditures and evaluating the effectiveness of the program.
 - (7) System for documenting job content.
 - (8) System for communicating the compensation program to employees and managers.
- b. Obtain DOE approval prior to changing compensation system component numbers 1-5 above.
- c. Obtain DOE approval on the salary surveys and survey participants used for market comparisons.
- d. Develop a Salary Increase Plan (SIP) annually, if appropriate, for the expenditure of funds that is consistent with the company's market policy, ability to pay, and relevant economic data, and obtain advanced DOE approval of this SIP.

The SIP will include the following:

- (1) Analysis of salary survey data and contractor's market position for salary structures and base pay levels. Comparison of average pay and salary range midpoints to market average pay for benchmark positions.

3.2.2 Salary Administration (Cont.)

- (2) Identification of needed funds by payroll groups expressed as a percentage of the appropriate base payroll for the end of the previous plan year. All components will be identified therein, e.g. merit, promotion, adjustment, lump sum, etc.

Unexpended portions of the SIP for one salary year are not carried into the succeeding salary year. All pay actions granted under the SIP are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before the year end (commonly called recovery).

- (3) The Contractor will evaluate major changes occurring in a given year, such as significant reduction in Contractor employment levels and adjust the SIP if appropriate.
- (4) Assessment of contractor's financial condition to determine affordability of increasing compensation costs.
- (5) Communication materials and tools for supervisors to help them plan salary actions to manage base salary relationships and pay for performance.
- (6) Submit an annual expenditure report, DOE F3220.8, to include breakouts for merit, promotion, adjustments, lump sums, and structure movement for each payroll showing actual against planned amounts.

- e. Assure no "catch up" occurs for monies saved as a result of the Secretary of Energy's 1994 salary freeze in accordance with prior DOE direction.

3.2.3 Approval of Individual Compensation Actions

The Contractor will submit annually proposed individual salary actions for Laboratory Director and Deputy Director positions for approval by DOE. Revisions or additions to this listing (e.g., new hires) must be approved by DOE.

3.2.4 Other Pay Provisions

a. Overtime

- (1) Annually the Contractor will develop and submit to DOE an overtime plan forecasting the overtime necessary to meet known work requirements. Overtime will be managed to provide for the safe and cost-effective utilization of human resources and efficient conduct of business. Performance will be reported to the DOE on an annual basis.

3.2.4 Other Pay Provisions (Cont.)

- (2) Nonexempt salaried employees may be paid for overtime hours worked on the same basis as employees within the bargaining units defined in Section 3.1.
- (3) Exempt salaried employees are eligible for either straight time pay or compensatory time off when required to work at the direction of their management in excess of 45 hours per week, as follows:
 - a. Employees at or below Salary Grade 5 are eligible for straight time pay.
 - b. All exempt employees, except those eligible for incentive compensation, are eligible to earn compensatory time off at the rate of one hour earned for two hours worked. Individual compensatory time may not exceed 80 hours annually.
 - c. Casual overtime will not be paid.
- (4) Employees in a capacity of supervisor may receive additional compensation when required to work extensive additional hours which result in serious inequities with other employees in the same work group.

b. Other Supplements

- (1) Pay practices may apply to nonexempt salaried employees to the maximum allowable consistent with collective bargaining agreements for the following benefits:

Call-in Allowance	Report for Work
Change in Working Schedule	Saturday and Sunday Work
Holiday Pay	Shift Differential
Lunch Periods	EMT Premium
Meal Allowances	Licensing Payments
Overtime and/or Premium Pay	

- (2) Saturday and Sunday Work - An exempt salaried employee who works on Saturday as part of the regular schedule may receive an additional twenty-five cents per hour for such work, unless such work is part of an extended work week.

3.2.4 Other Pay Provisions (Cont.)

An exempt salaried employee who works on Sunday as part of the regular schedule may receive an additional fifty cents per hour for such work, unless such work is part of an extended work week.

These payments may not be included in earnings when calculating the employee's participation in the various benefit plans.

- (3) Meal Allowances - An exempt salaried employee may be paid a meal allowance to the maximum allowable consistent with bargaining unit agreements set forth in Section 3.1.
- (4) EMT Premium - An exempt salaried employee who is required by the company to carry the EMT Medical Technician Certification may be paid a premium consistent with that paid under bargaining unit agreements listed in Section 3.1.
- (5) Licensing Payments - Where required to perform specific jobs in nuclear reactor operations related positions, a licensing payment for nuclear reactor controllers and related licensed positions is an allowable cost as long as the total compensation remains reasonable as supported by market data. Licensing payments discontinue upon failure to receive the required periodic relicensing.

c. Salaried Employees - Part Time Employment

Part-time employees may be hired regardless of the salary ranges that are to be used. Compensation, determined by time actually worked, will be calculated on the same basis as for full time, salaried employees at a rate comparable to that paid to regular employees in similar assignments. All part-time employees are considered nonexempt for overtime purposes consistent with Fair Labor Standards Act regardless of job classification.

Part-time employees may participate in the following plans and activities:

Company Service Credit	Pension Plan
Group Insurance	Safety Programs and Awards
Holiday Pay (if working)	Savings Plan
Jury Duty (scheduled workday)	Shift Differential
Layoff Allowance	Travel
Occupational Disability	Vacation Plan
Overtime Premium	Voting

3.2.4 Other Pay Provisions (cont)

The part-time employee cost for group insurance premiums is the regular employee premium plus a prorated portion of the contractor cost for each plan. Vacation eligibility is prorated on the basis of total hours worked as a percentage of the regular schedule during the prior year (hours worked divided by 2080 hours). Part-time employees are eligible to convert to full-time status when management deems the change to be in the best interest of work performance under the Contract.

d. Shift Differentials - Exempt Employees

Exempt salaried employees assigned to shift work will receive shift differential as follows:

- (1) Employees assigned to the standard rotating shift schedule may receive up to \$65 a month.
- (2) Employees assigned to the 4 p.m. to 12 midnight shift or any variation of this shift, may be paid up to \$60 per month.
- (3) Employees assigned to the 12 midnight to 8 a.m. shift or any variation of this shift, may be paid up to \$110 a month.
- (4) Employees assigned to a rotating shift other than the standard rotating shift will be paid a combination of the appropriate differentials based on the percent of time worked on each shift.
- (5) Employees assigned to an irregular shift may be paid the differential for the shift on which more than 50 percent of the hours were worked. If time is equal, the highest rate may be used.

e. Holiday Pay

Hourly employees will be paid in accordance with collective bargaining agreements listed under paragraph 3.1 of this Appendix. Salaried employees working on scheduled holidays may be given holiday pay when schedules and contract requirements necessitate work to be scheduled on company observed holidays (which are listed under paragraph 4.2 of this Appendix). Holiday pay is paid at the rate of 2 ½ times the employee's adjusted rate for nonexempt employees and 2 times the employee's adjusted rate for exempt employees in grades 5 and below.

3.3 Severance Pay

3.3.1 Severance Pay Benefit

a. General

Severance pay is payable to an employee who has three months or more of Company Service Credit and who is laid off on account of lack of work - unless the layoff is caused by a temporary suspension of work or the employee was hired for intermittent or casual work or as a temporary worker for a limited time or for a specific project.

If an employee is reemployed by the Contractor after having been paid a severance payment, Company Service Credit for any subsequent severance payment consideration shall start from the date of such reemployment. If any individuals are reemployed by the Contractor prior to the end of the period covered by the severance pay (e.g., received 20 weeks severance pay, but reemployed after 15 weeks), the difference must be refunded.

No severance pay is paid to employees who terminate their employment voluntarily, who are discharged, or who resign by Contractor request, except for:

- (1) Medical reasons (i.e., those terminated due to contractor determination of mental or physical inability to perform available work).
- (2) Employees who transferred directly from the predecessor Contractor (Union Carbide Corporation, Nuclear Division) to work under this contract, and who were hired by the predecessor Contractor prior to January 1, 1966 (substitute January 1, 1967, for hourly production and maintenance (P&M) employees of the ORGDP), who are laid off at retirement age (early or normal) or who voluntarily elect retirement are paid a severance pay based on Company Service Credit with the predecessor Contractor through December 31, 1965 (substitute December 31, 1966, for hourly P&M employees of the ORGDP).

Any such employee eligible for this Special Benefit who transferred from the predecessor Contractor (Union Carbide Corporation, Nuclear Division) to one of its private sector operations and back to the contract work during the term of the previous Union Carbide contracts, retained eligibility for this benefit at retirement. No further service under this contract will be credited to any employee toward this Special Benefit. Any severance pay granted will be based on the employee's basic rate of pay at the time of termination.

- (3) Voluntary Reduction in Force (VRIF) Programs: Situations wherein a reduction in force is necessary in an employee unit and an employee volunteers with Contractor consent to be laid off in the reduction in force in place of another person. All VRIF programs require prior DOE approval.

3.3.1 Severance Pay Benefit (Cont.)

b. Amount of Severance Pay

Severance pay will be calculated on the basis of the employee's basic rate in effect at the time of layoff (including extended hours' pay, if any, but excluding all overtime premium or shift differential) and may be paid in accordance with the following schedules:

(1) Hourly Employees

Refer to the terms and conditions set forth in the applicable collective bargaining agreements listed in section 3.1.a of this Appendix for allowable costs.

(2) Salaried Employees

<u>Company Service Credit</u>	<u>Severance Pay</u>
Under 3 months	No pay
3 months and under 1 year	Same proportion of ½ month's pay as completed months of service are of 12 months
1 year and under 3 years	½ month's pay
3 years and under 5 years	¾ month's pay
5 years and under 7 years	1 month's pay
7 years and under 10 years	1-1/2 month's pay
10 years	2 month's pay
11 years	Same for 10 years, plus 1/4 month for each additional year of service

3.3.2 Replacement Employer

Severance pay benefits are not payable when an employee is employed by or receives an offer of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment.

4. Benefit Programs & Policies

The employee benefit plans, and related cost, described in this section are approved by DOE for application to employees working on this Contract and are reimbursable. In addition, retirees of this Contractor or the predecessor Contractor have limited coverage of these benefits.

The benefit programs will be designed and administered to attract, retain, and motivate competent and productive staff. The programs will be competitive with labor markets from which employees are recruited, cost effective and in compliance with applicable laws and regulations.

Refer to the terms and conditions set forth in applicable collective bargaining agreements listed in this Appendix A, Section 3.1.a for allowable costs for hourly employees.

Contractor benefit programs will be designed and administered to attract, retain, and motivate competent and productive staff to support the DOE missions. In order to determine reasonableness of cost, the Contractor will:

- a. Conduct a benefits value study (market assessment) every 2 years to evaluate the relative value of the overall benefits package.
- b. DOE and the contractor will mutually agree on the companies to be used in the 1996 benefits value study. DOE will receive a copy of the study.
- c. The contractor's net benefit value will be managed so as not to exceed the average net benefit value (from the benefits value study) with appropriate consideration for the financial health of the organization and the reasonableness of the total compensation package.
- d. All changes to the contractor's benefit programs will be approved by the DOE.

4.1 Company Service Credit

Company and Credited Service can be restored to employees in accordance with the Contractor's Company and Credited Service policies. Policies will be administered consistently in accordance with applicable laws, and Corporate rules.

- a. In order to facilitate the retention of certain critically skilled employees within the DOE management and operating, performance-based management, and environmental restoration and management systems, the Contractor may recognize (for the purpose of establishing appropriate vacation benefits) prior service credit earned while employed in the DOE system provided all the required criteria contained in Acquisition Letter 94-19 is met. The Deputy Laboratory Director must approve any grant of "vacation credit".

4.1 Company Service Credit (Cont.)

- b. When an individual is transferred to the service of the contractor from the DOE or from one of its contractors because of the transfer of a function to the Contractor, such employees may be granted Company Service Credit for all of such previous DOE contract-related service provided that:
- (1) the individual's service with the previous employer is essentially continuous with the time of transfer to the Contractor;
 - (2) the Company Service Credit thus allowed does not entitle the employee to buy back interest in employee benefits such as the Retirement Plan, but is limited to possible increased future benefits such as, but not limited to, vacations, nonoccupational disability allowances, and layoff allowances; and
 - (3) in all other respects the Company Service Credit will be allowed in accordance with the Contractor's Company Service Credit Rules.

4.2 Holidays

The Contractor observes the following holidays during the calendar year.

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
Good Friday	Friday after Thanksgiving
Last Monday in May	Christmas Associated
Independence Day	Christmas
Independence Day Associated (or other day determined by the contractor)	

4.3 Short Term Disability Pay for Salaried Employees

Under the contractor's absence control program, a system to assure appropriate administrative actions are taken in a timely manner based upon medical evidence is implemented to assure reasonable sick leave usage and management of the Disability Allowance Program for both non-occupational and occupational disabilities. The schedule of maximum salary continuation for short term disabilities is as follows:

<u>Company Service Time</u>	<u>Duration of Salary Continuation</u>
One month but less than two months	One month
Two months but less than three months	Two months
Three months but less than four months	Three months
Four months but less than five months	Four months
Five months but less than six months	Five months
Six or more months	Six months

4.3 Short Term Disability Pay for Salaried Employees (Cont.)

Salary continuation for short term disabilities will be on a per disability basis. Ordinarily, salary payments during short term disabilities will be made at the employee's adjusted rate. Any "loss-of-earnings" payments received, such as Workmen's Compensation Benefits in cases of occupational disability, will offset the continued payments of salary.

4.4 Vacations

The cost of salaried employee vacations taken in accordance with the established vacation plan is allowable.

Company Service on 1/1/96	Vesting Schedule	Eligibility	Banking Maximums*
Employees ≥ 15 years	Upon attainment of actual service Upon attainment of actual service Vest vacation for next CY on 12/31 of previous CY. CSC requirements in eligibility table can be met anytime in the CY in which the vacation is taken.	6 mos. CSC - 40 hrs. 1 yr. CSC - 80 hrs. 2-4 yrs. CSC - 80 hrs. 5-9 yrs. CSC - 120 hrs. 10-19 yrs. CSC - 160 hrs. 20-24 yrs. CSC - 200 hrs. 30+ - 240 hrs.**	None None None 1 wk./yr. - max. 240 hrs. 2 wks./yr. - max. 240 hrs. 2 wks./yr. - max. 240 hrs. 2 wks./yr. - max. 240 hrs.
Employees < 15 years	Same as above	6 mos. CSC - 40 hrs. 1 yr. CSC - 80 hrs. 2-4 yrs. CSC - 80 hrs. 5-9 yrs. CSC - 120 hrs. 10-19 yrs. CSC - 160 hrs. 20+ CSC - 200 hrs.	Same as above.
New Hires after 1/1/96	Vacation accrued monthly	Same eligibility as employees with <15 years service	None None None 1 wk./yr. - max. 200 hrs. 2 wks./yr. - max. 200 hrs. 2 wks./yr. - max. 200 hrs. 2 wks./yr. - max. 200 hrs.

*Core vacation is the 80 hours per year of vacation entitlement that all eligible employees are strongly encouraged to use. Core vacation may not be banked.

**EMEF employees located at Portsmouth Site on January 1, 1991, and who at that date had 15 or more years of service, will be entitled to 240 hours vacation for 25 years of service.

4.4.1 Vacation Payments

- a. An hourly employee who is deprived of a vacation at the end of the year due to a short term disability, through management action, or because of unusual working conditions may receive payment for such vacation in addition to regular pay. A salaried employee similarly deprived of a vacation will receive equivalent time off in the following year unless payment for the vacation is authorized by the contractor.

- b. An individual may be paid for unused vacation at the time of termination. An individual may be paid for unused vacation at the time of termination. When an employee transfers to another company within Lockheed Martin Corporation the contractor is authorized to transfer funds to the new organization to cover the liability and/or to make payment directly to the employee. The cost of this action will not exceed the cost that would be incurred by the contractor if the employee had voluntarily quit.

4.4.2 Vacation Exceptions

The Deputy Laboratory Director has authority to change vacation entitlement in two ways:

- (1) by rolling entitlement from one year to the next where work schedules did not permit the employee to use the vacation and banking is not available; or
- (2) by granting up to two weeks of additional vacation eligibility on an exception basis to select new employees when, in the opinion of the Contractor, such an extraordinary entitlement is necessary to successfully hire the senior, critical, or key employee. In such exceptional cases, the individual would be eligible for either three or four weeks of vacation each year as authorized by the Vice President - Human Resources or Deputy Laboratory Director until their company service would deem them eligible for more vacation.

4.5 Leaves of Absence

4.5.1 Personal Leave

Salaried employees may be granted time off with pay for personal commitments which cannot be handled except during working hours and for tardiness due to severe weather conditions and similar occurrences which temporarily prevent the employee from reporting to work. The amount of time is limited as follows:

January 1, 1996	80 hrs./calender year
January 1, 1997	40 hrs./calendar year*

*Deputy Laboratory Director may authorize up to an additional 40 hours for extenuating circumstances.

- a. Personal leave is any excused absence which results in fewer hours worked than normally scheduled, and which is not granted as compensation for unpaid overtime worked or is not made up with overtime. Salaried employees may be excused from work for extenuating personal circumstances, such as serious illness in the immediate family, appearance in court as a witness other than for the contractor or DOE, or any similar circumstance which in the opinion of the Contractor warrants an excused absence and will not interfere with the Contractor's operations. Granting personal leave shall be prudently controlled, and vacation will be used for

most personal circumstances, such as marriages, graduations, and similar occasions. The contractor shall maintain a system for approval and tracking of Personal Leave usage.

- b. Personal leave with pay is at the employee's adjusted salary rate.
- c. Hours paid for under the provisions of this policy do not count as hours worked toward Overtime and/or Premium pay.

4.5.2 Leave of Absence Without Pay

An employee may be granted a leave of absence without pay, of any duration, by the contractor provided the absence will not interfere with the Contractor's operations or create any conflict of interest. Continuation of benefits during leave of absence without pay will be administered according to the Contractor's leave of absence policy.

- a. Granting of company service for the full period of the leave (not to exceed 3 years) and restoration of vacation eligibility immediately upon return to work may be provided for employees who return to work from:
 - 1. Leaves granted when it is in the company's interest to make an employee's expertise or services available to DOE, another DOE contractor, another government agency, or to work-related agencies such as the International Atomic Energy Agency (Vienna), or the Center for Study of Communicable Diseases (Atlanta).
 - 2. Entrepreneurial leaves granted to accelerate technology start up based on DOE developed technologies.
- b. Continuation of company service credit and/or immediate restoration of vacation upon return to work for any leave without pay other than those listed above require prior DOE approval if the leave exceeds 180 days.

4.5.3 Paid Educational/Sabbatical Leave

- a. Salary continuation and benefit costs will be allowable for the granting of up to 4 leaves company wide for the following purposes:
 - 1. To obtain advanced terminal degrees in fields of study which, in the opinion of the contractor, will further the DOE mission.
 - 2. To teach or perform research at an accredited college, university or research institute.
- b. Maximum of 4 leaves at any given time.

4.5.3 Paid Educational/Sabbatical Leave (Cont.)

- c. The leaves require approval by the Deputy Laboratory Director.
- d. May be approved for a duration not to exceed 24 months.
- e. If the employee does not return to active work after the approved leave period, the employee will be required to pay back the salary continuation and benefits costs received during the leave.
- f. If the employee voluntarily leaves the Contractor's payroll prior to working three years after returning to active work, the employee will be required to pay back the salary continuation and benefit costs on a prorated schedule based on the amount of time they have been back on the contractor's payroll.
- g. No educational assistance, travel or relocation expenses will be paid to employees on these leaves of absence with pay.

4.6 Jury Duty

An employee who is called for jury duty may be protected against loss of pay for the period of time needed to fulfill the obligation.

Employees may be paid their adjusted rate of pay for the regular day. Hours paid for under this policy may count as hours worked by salaried and hourly employees in the calculation of Overtime and/or Premium Pay.

4.7 Death Benefits - Salaried Employee Payments

In case of death of a salaried employee, salary payments may be continued until the end of the month following the month in which death occurs.

4.8 Military Service, Training, and Emergency Duty

Military service, training and emergency duty policies are administrated in accordance with applicable laws contractor policies and procedures.

An employee will be granted a leave and protection against loss of pay for required military training and emergency duty. Such payments are limited to a maximum of two weeks per year (or four weeks every two years) for training and one month per year for emergency duty at the employee's adjusted rate.

An employee also may be paid for absences from work when required to register or take a physical examination required for entry into the armed forces.

4.9 Community Service

4.9.1 Civic Leave

Employees holding elected federal, state, or local government office may be permitted to utilize a reasonable period of working time with pay to carry out responsibilities which are required by the office and cannot be handled outside working hours.

4.9.2 Civil Defense/Emergency Preparedness Exercises

Employees who have volunteered and have been accepted by a local Civil Defense Organization to participate in community or national defense alert operations or in Civil Defense/Emergency Preparedness training may be excused from work for such participation without loss of pay for scheduled hours of work.

4.9.3 Election Officials

An employee who has been officially appointed to serve as an election officer, judge, or clerk may be excused from work without loss of pay for the period of time necessary to serve in such capacity.

4.9.4 Voting Time

Employees may be excused from work without loss of pay for the minimum time needed to vote in a national, state, county, or municipal election consistent with state laws.

4.10 Group Insurance Plans

The Contractor will be reimbursed for all cost incurred in implementing, administering, and funding comprehensive group insurance plans. The features of these plans are set forth in policies and summary plan descriptions, a current copy of which will be provided to DOE. These plans will be administered consistently in accordance with Plan Documents, insurance contracts, applicable laws and fiduciary responsibilities. The Contractor will periodically review the Plans to assure plan designs represent good business practices regarding the incorporation of cost containment features, and to assure the overall benefit package is reasonable from a total compensation perspective.

4.10 Group Insurance Plans (Cont.)

Plan	Current Contractor Cost*
Group Life Insurance	Active salaried employees, retirees under age 65 - 50% of full cost for basic life.
Medical Expense including Prescription Drug and Vision Plans	Active employees - 88% of full cost Retirees (with greater than 10 years full time service) - 75% of full cost
Major Medical Medicare Supplement Plan	Retirees (with greater than 10 years full time service) - 50% of full cost
Dental Expense Assistance Plan	Active employees - 88% full cost effective July 1, 1996 Retirees under 65 - 75% of full cost effective July 1, 1996
Travel Insurance	100% of full cost
Special Accident Insurance Plan	0 - fully paid by employee
Long Term Disability Plan	100% of full cost for replacement income - 60% of salary
Medical and Dependent Care Flexible Spending Accounts	Administrative Cost only

*This table will be revised to reflect 1996 benefit plan changes when determined.

4.10.1 Benefits Program for Displaced Workers

- a. The cost of medical plan coverage for contractor employees who have separated from employment, excluding those terminated "for cause," will be reimbursable [from the date of separation provided the employee:](#)
 1. [on the employment rolls and voluntary or involuntary separation on or after October 23, 1992, as a result of the implementation of a work force restructuring plan requested by the Secretary of Energy; and](#)
 2. [eligible for medical insurance coverage under the contractor's plan at the time of separation from employment; and](#)
 3. [not eligible for coverage under an employer's group health plan or Medicare since the time of separation.](#)
- b. Retirees eligible for medical coverage under the Contractor's health plan will not be eligible for coverage under this Order.
- c. Benefits for displaced workers contained in a Workforce Restructuring Plan, developed pursuant to the National Defense Authorization Act of 1993, are reimbursable to the extent that a specific description of each benefit with supporting information and detailed projected costs has been reviewed and approved in advance by DOE, for inclusion in the Plan.

4.11 Pension & Savings Plans

The Contractor will be reimbursed for all costs incurred in implementing, administering, and funding the above plans. The features of the Pension and Savings Plans are set forth in plan descriptions, current copies of which will be provided to DOE. These plans will be administered consistently and in accordance with applicable laws, Internal Revenue Service code, Plan Documents, and fiduciary responsibilities. The Contractor will periodically review the Plans to assure that the plan design meets Contractor objectives to provide income replacement value consistent with industry standards, and to assure the overall benefit package is reasonable and competitive from a total compensation perspective. The contractor cost of these plans are included in the table below:

Plan	Contractor Cost
Pension Plan	100% contractor paid
Savings Plan	50% match up to 6% of pay (3% of pay) Effective January 1, 1998: 75% match up to 2% of pay 50% match for the next 4% of pay 3½% of pay total Effective January 1, 1998: 100% match up to 2% of pay 50% match for the next 4% of pay (4% of pay total)

4.11.1 Reports

The Contractor will submit copies of actuarial valuation reports (prepared by the Contractor's actuarial consultants), a copy of IRS Form 5500 with schedules as submitted to IRS, and other financial or accounting reports developed or required in connection with the DOE reimbursed Pension and Retirement Plans.

4.11.2 Non-Qualified Pension Plans

Non-qualified Pension Plans implemented solely to replace the reductions in the Pension Plan benefit due to limitations imposed by Sections 415 and 401(a) 17 of the Internal Revenue Code are reimbursable under this contract. These plans will provide employees with benefits provided under the formulae expressed in the contractor's Pension plan and does not provide any additional benefit absent the Internal Revenue Code limitations. These benefits will be funded on a pay-as-you-go basis.

4.11.3 Incentive Compensation

The inclusion of Incentive Compensation (IC) in pensionable earnings is an allowable cost with the following restrictions:

- a. The normal cost to the pension plan will not exceed \$65,000 per year in 1996 dollars.
- b. No more than 12 active employees will be covered by IC at any one time.
- c. Energy Research will not exceed either the dollar amount or number of employees covered without prior written approval of the Contracting Officer or his designee.

4.11.4 Contract Termination/Expiration

The contractor shall not terminate any benefit plan without DOE approval. All costs for claims arising from defined benefit plans and post-retirement life, medical, and other benefit liabilities for active and retired employees are obligations of the government. It is the intention of DOE not to entertain any enhancements in these programs after the contractor announces the intention not to renew the contract. At the termination or expiration of this contract, the contractor's obligations to employees and retirees for these plans shall be relieved and indemnified by the government as described below:

a. Defined Benefit Plans

- (1) If the contract terminates or expires and there is a replacement contractor, all assets and liabilities shall transfer to the replacement contractor, and the contractor shall be relieved of, and indemnified by DOE, against any and all liabilities arising from such plans.
- (2) If the contract terminates or expires and there is no replacement contractor, the plan shall be terminated in accordance with the provisions of ERISA and the Internal Revenue Code (IRC). Annuity purchase bids will be solicited from a minimum of five of the ten largest insurance companies whose AM Best rating is A+ and who are currently quoting pension plan termination annuities. After all obligations for all liabilities (as defined in IRC 1.414(1)) of these defined benefit plans have been fully funded, as well as any related tax liability of the corporation, any remaining assets shall be returned to the DOE. If the assets are insufficient to cover pension obligations, DOE shall provide additional funding to cover such obligations.
- (3) If the plan terminates before the contract terminates, the definition and disposition of assets and liabilities shall be as specified in paragraph (2).
- (4) Under the scenarios described in paragraphs (1), (2), and (3), the contractor shall actively manage all assets until the date of settlement. Such management shall include protection of principal if appropriate.

b. Defined Contribution Plan

Upon contract termination, individual employee accounts in the defined contribution plan shall be handled in accordance with the provisions of ERISA. Any unallocated funds (e.g., suspense accounts) shall be returned to the DOE.

c. Post-Retirement Life and Medical, and Other Benefit Obligations

- (1) If the contract terminates and there is a replacement contractor, all assets and liabilities shall transfer to the replacement contractor, and the contractor shall be relieved of, and indemnified by DOE, against any and all further liabilities arising from such plans.
- (2) If the contract terminates and there is no replacement contractor, DOE will make available to the contractor in a timely manner sufficient funds so that the contractor has no out-of-pocket expenditures from corporate funds to cover all liabilities incurred under this contract related to Contracting Officer-approved employee welfare benefit plans (including but not limited to medical, life, and workers' compensation). If so requested by DOE at the time of contract termination or expiration, the contractor will continue as the sponsor of these plans until all liabilities of such plans are discharged.

d. Taxes and IRS Penalties

If contractor action or inaction regarding plans approved by the Contracting Officer results in a tax or other IRS penalty, the contractor shall pay same from corporate funds.

If DOE action or inaction regarding plans approved by the Contracting Officer results in a tax or other IRS penalty, the contractor shall pay same from DOE funds.

4.12 Employee Assistance Program

The Contractor will provide for an Employee Assistance Program consistent with the Drug Free Workplace Act of 1988. This benefit will be administered in accordance with the contract between the contractor and the EAP vendor. Periodic internal reviews will be conducted to assess cost/benefit of program delivery under current contract.

4.13 Funeral Leave

In the event of the death of a member of the employee's immediate family, a salaried employee may be granted leave with pay for up to four days.

4.14 Decision Making Leave

Time off with pay for a decision making leave under the Contractor's discipline program is allowable.

5. Employee Programs

5.1 Education & Training

a. Cooperative Educational Program

The Contractor may provide temporary employment opportunities for students under the cooperative education and student intern programs. Payment for tuition, books, and fees for up to four academic years is allowable.

b. Educational Assistance Program

The Contractor may provide financial assistance to eligible employees who engage in educational activities in order to establish, maintain, or upgrade skill required by the Contractor. Eligible employees must satisfactorily complete courses of study to be eligible for assistance. Educational assistance may include payment for tuition, textbooks, and fees. Payment may also be made for proficiency testing which results in the granting of academic credit or is otherwise required by the school.

Regular work hours may be rescheduled to attend classes provided that there is no significant reduction in the employee's productive contribution caused by the rescheduling. Reduction of work schedules, with appropriate reduction of pay, and leaves of absence may be granted to facilitate course completion where deemed beneficial to pay for work under the Contract. Employees participating in Educational Assistance Program may use facilities, equipment, and services in support of their studies if approved by management.

c. University Program Participation

The Contractor may permit a rescheduling of regular work hours or a reduction in the work schedule and corresponding reduction in pay for Contractor employees who are engaged in teaching, planning, or general management at local colleges or universities.

d. Training

The Contractor may conduct or permit employees to attend training programs and courses which are based on training needs assessments. These training courses should contribute to the performance of work under the contract and be provided at reasonable costs to the government.

e. Benefit Plans Participation

Employees working on a reduced workweek schedule under 5.1.b and c will be permitted to participate in all employee plans, based on their full regular salaries and the continuation of full Company Service Credit.

5.2 Employee Recognition and Memberships

The costs of employee recognition programs and organizational and individuals memberships are allowable based on a budget formula not to exceed 1/4 of 1% of base payroll on September 30 of the prior fiscal year. Program costs include the following:

- Company service awards for achieving service milestones consistent with the Corporate service awards program.
- Safety awards and recognition to promote health and safety.
- Awards, recognition, and celebrations for participating in management initiatives, special achievements, retirement, and similar activities to the extent that they are reasonable and consistent with industry practice.
- The costs of organization and employee memberships in trade, business, and technical organizations necessary for effective performance of work under the contract provided they are reasonable and do not constitute payments for, or in support of, partisan and political (lobbying) activity.

5.3 Patent Awards

Cash Awards of \$500 may be made to each inventor (or each coinventor) for each invention filed in the U.S. Patent and Trademark Office which benefits the objectives of the Contractor and DOE.

Cash Awards of \$150 may be made to each author (or each coauthor) of works (other than scientific and technical articles) for which the Contractor has asserted copyright for the purpose of registration and commercialization through licensing.

6. Travel and Relocation

- a. The Contractor may pay transportation, lodging, meals, incidental, relocation, and other expenses for employees or other persons required to travel or move in conjunction with the performance of work under this contract. Allowable costs for travel and relocation include actual and reasonable costs according to Public Law 103-355, (Federal Acquisition Streamlining Act of 1994), applicable provisions of the FAR and DEAR, the Federal Travel Regulations, the Internal Revenue Service auto allowance and standard industry practice. The Contractor may deviate in specific instances where it is determined to be economically advantageous to the DOE and to the extent such deviations conform to pertinent regulations and law. The Contractor will maintain records based on its determinations to deviate in specific instances sufficient for audit review.
- b. When the Contractor requires employees to work at domestic locations of significant distance from their regular assignment location or in a foreign country, on a temporary or permanent basis, compensation may include allowances to address the incremental increase in the cost of living. The intent is to keep employee's compensation and standards of living reasonably whole so that they suffer neither a significant financial loss nor gain because of the assignment.
- c. Relocation costs are those costs incident to (1) the permanent change of duty station of an existing employee and (2) the recruitment of a new employee.
- d. Reasonable and necessary expenses incurred in the recruitment of personnel consistent with applicable provisions of the DEAR and FAR and standard industry practice are reimbursable.

7. Miscellaneous Policies

7.1 Participation in Association Activities

Cost incurred as a result of participation in the activities of technical, professional, and business methods associations will be allowed, as long as reasonable and necessary for the performance of effective work under the contract.

7.2 Licenses and Fees

The costs of required licenses, fees, and similar costs to certify and maintain employee qualifications to perform work under the contract are allowable. The Contractor will closely manage and control the number of licenses/fees to limit reimbursed costs to provide a sufficient number of qualified employees to reasonably perform the affected work under the contract.

7.3 Personnel Borrowed

The cost associated with Corporation employees not working for Lockheed Martin Energy Research Corporation borrowed for incidental work under this contract is reimbursable. Reimbursement for the time such employees work under this contract will be allowable in accordance with the home operating unit's disclosed costing practices. Time worked under this contract will include the time spent by employees en route to and returning from the site of work. Travel cost of such borrowed personnel will be allowed on the same basis as for employees working on the contract.

7.4 Personnel Loaned

The Contractor may loan, at no cost to the government, individuals working under this contract to other operations as long as it does not interfere with the performance of contract work. Each loan arrangement will be reviewed to assure no conflict of interest and approved by the cognizant business unit vice-president. A cumulative report showing all employees loaned, along with the total days loaned and services provided, will be submitted to the DOE annually.

7.5 Personnel Support Activities

The Contractor will be reimbursed for costs for activities incidental to the promotion of morale, welfare, health, and safety of employees, such as employee publications; health and first aid clinics; net costs of in-plant food services (operated on a break-even basis); employees time to promote employee participation in Blood Drives, U.S. Savings Bonds and United Fund campaigns; and other similar activities which may be sanctioned by the Contractor.

7.6 Protective Clothing

Employees who are required or allowed to wear special clothing, shoes and protective equipment for various reasons such as safety, housekeeping, protection from harmful chemicals or radioactive contamination, guard exercise clothing, etc., are furnished such items at no cost to the employees. Cost of providing and laundering of such special clothing are allowable costs. Safety glasses or goggles and safety shoes other than those furnished by the Contractor (one pair of which may be sold to any employee once every two years at \$8 less than cost per pair in an attempt to prevent off-the-job lost-time accidents) are also allowable costs.

7.7 Security Suspension Pay

- a. If the access authorization of an employee is suspended by direction of the Manager, Oak Ridge Operations Office, the Contractor shall transfer the employee to perform work not requiring access if such work is available. If a determination is made by the Contractor that no work is available in an uncleared area to which the employee may be transferred, the Contractor shall prepare a written report for the review and concurrence of DOE, setting forth the reasons for the determination. Subject to DOE's concurrence with such determination, the Contractor shall place the employee on leave with pay at the employee's current base compensation until the employee is notified in writing of the Hearing Officer's recommendation. If the Hearing Officer recommends revocation of access authorization the employee shall be placed on leave without pay. If the Hearing Officer recommends continuation of access authorization payment of the base wage shall be continued until final disposition of the case under Department procedures, 10 CFR Part 710.
- b. In the event the employee whose access authorization has been suspended is transferred to another position where such access authorization is not required, compensation shall, thereafter, be the base wage or salary received by the employee on the position from which transferred, and such compensation shall continue until the employee is notified in writing of the Hearing Officer's determination. If the Hearing Officer recommends revocation of access authorization, compensation will be adjusted to the rate applicable to the job being performed.

If the Hearing Officer recommends continuation of access authorization, the base wage previously received shall be continued until final disposition of the case under Departmental procedures, 10 CFR Part 710.

- c. If at any stage of the access authorization procedure following a suspension, the employee's access authorization is reinstated and returns to work in the same or comparable position, the employee shall be reimbursed for net loss of base earnings during the period of suspension.

7.8 Business Expenses

The following expenses to the extent reasonable and which contribute to the effectiveness of the Contractor's work under the contract will be allowable:

- a. Booklets and pamphlets describing the capabilities of the Contractor, e.g, operational, financial, personnel, etc.
- b. Cost of meetings, including cost associated with activities such as labor negotiations, recruiting, etc.
- c. The cost of business meals is allowable to the extent reasonable and necessary for the effective performance of contract work. The Contractor shall establish and maintain effective internal controls.

Contract No. DE-AC05-96OR22464

APPENDIX B

SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

LMER will utilize the Special Financial Institution Account Agreement contained in the LMES Contract No. DE-AC05-84OR21400, Appendix B, for payment processing.

**LOCKHEED MARTIN ENERGY SYSTEMS, INC., AND
THIRD NATIONAL BANK OF EAST TENNESSEE
SPECIAL ACCOUNT AGREEMENT FOR USE WITH THE
CHECKS-PAID METHOD OF LETTER-OF-CREDIT FINANCING**

Agreement entered into this 1st day of October, 1995, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE"), and Lockheed Martin Energy Systems, Inc., a corporation/legal entity existing under the laws of the State of Delaware (hereinafter referred to as the Contractor) and Third National Bank of East Tennessee, located at 700 East Hill Avenue, Knoxville, Tennessee 37915, a national banking association chartered pursuant to laws of the United States (hereinafter referred to as the Institution).

Recitals

(a) On the effective date of October 1, 1993, DOE and the Contractor entered into Agreement(s) No. DE-AC05-84OR21400; Mod No. 152, or Supplemental Agreement(s) thereto, providing for an advance of funds by a letter of credit. Copy of such advance provisions has been furnished to the Institution.

(b) DOE requires that amounts advanced to the Contractor thereunder be deposited in a special demand deposit account at a financial institution covered by Department of the Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000 (see Fig. IX-10).

These special demand deposits must be kept separate from the Contractor's general or other funds and the parties are agreeable to do depositing said amounts with the Institution.

(c) The special demand deposit account shall be designated Lockheed Martin Energy Systems, Inc., Government Fund Account #1 (General Account). All ancillary accounts will be titled the same but having a different number and title to designate its specific use as in GFA#2 (Payroll).

(d) The Contractor as the Primary Recipient Organization (PRO), may from time to time, have need to provide funding to a Secondary Recipient Organization (SRO) through the SRO's financial institution to support the Contractor's contractual obligations to the DOE. The Contractor must submit a written request to DOE for prior approval to enter into an agreement with an SRO to allow for advancement of funds. As required by 1 TFM-6-2000, Contractor shall develop procedures whereby SRO's can obtain funds from the PRO as needed for disbursement. The request for approval shall contain these procedures and a copy of the agreement with the SRO. Once approved, the PRO shall notify its Depository Financial Institution (DFI) of the agreement and the procedures for advancing funds to the SRO through the DFI of the SRO. Contractor/PRO acknowledges that advances to any SROs shall conform substantially to the same standards of timing and amount as apply to advances by DOE to Contractor/PRO.

Covenants

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(1) The Government shall have a title to the credit balance in said account to secure the repayment of all advance payments made to the Contractor, and said title shall be superior to any lien, title or claim of the Institutions with respect to such accounts.

(2) The Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the deposit and withdrawal of funds in the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the Institution shall not be responsible for the application of funds withdrawn from said account. After receipt by the Institution of directions from the Contractor, on behalf of DOE, the Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Institution from the Contractor acting on behalf of DOE and purporting to be signed by,

**LOCKHEED MARTIN ENERGY SYSTEMS, INC., AND
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or signed at the written direction of, the contractor may, insofar as the rights, duties, and liabilities of the Institution are concerned, be considered as having been properly issued and filed with the Institution by the contractor.

(3) DOE, or its authorized representatives, shall have access to the books and records maintained by the Institution with respect to such special demand deposit accounts at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such books and records and any or all memoranda, checks, correspondence, or documents pertaining thereto. Such books and records shall be preserved by the Institution for a period of 6 years after the final payment under the Agreement.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account, the Institution shall promptly notify DOE at:

Oak Ridge Operation Office
P. O. Box 2001
Oak Ridge, Tennessee 37831-8772
Fax No. (423) 574-5374

(5) DOE shall issue a letter of credit that is irrevocable to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Institution for the benefit of the special demand deposit account. The Institution agrees to honor upon presentation for payment all checks issued by the Contractor and to restrict all Letter of Credit withdrawals to an amount sufficient to maintain the account balance as close to zero as administratively possible each day.

If documentation furnished by the Institution demonstrates that this withdrawal procedure would be inequitable to DOE or to the Institution, Covenant 5 may be modified upon agreement of all parties concerned. The Institution shall comply with the provisions contained in I TFM 6-2000, which states that payment vouchers (TFS form 5805) ordinarily should not be drawn more frequently than daily or for amounts less than \$5,000, and in no case should they be drawn for more than \$50,000,000 unless so stated in the Letter of Credit. In the event that the balance remaining in the letter of credit limitation is not sufficient to cover the checks presented, the Department of the Treasury will, at the specific authorization of DOE, instruct the Federal Reserve Bank to immediately wire a transfer of funds from the Department of the Treasury account to the Institution's account, for the benefit of the Contractor's Special Demand Deposit Account, in an amount sufficient to cover the check presented in excess of the available Letter of Credit balance. The Institution agrees to service the account in this manner based on the requirements and specifications contained in the Lockheed Martin Energy Systems solicitation dated September 1, 1993. The Institution will invoice the Contractor monthly for services rendered the previous month based on the "Per Item Costs," detailed in the form "Schedule of Bank Processing Charges," contained in the Institution's proposal dated September 30, 1993. The Institution agrees that the per item costs detailed in Exhibit 2, shall remain constant during the term of this agreement.

(6) The Institution shall post collateral, acceptable under Department of the Treasury Circular 176, with the Federal Reserve Bank in an amount equal of the Federal funds deposited in all of the accounts included in this Agreement, less the Department of the Treasury-approved deposit insurance.

(7) This Agreement, with all its provisions and covenants, shall be in effect for a term of two and one-half (3 1/4) years, beginning on the 1st day of October 1995, and ending on the 31st day of December, 1998.

**LOCKHEED MARTIN ENERGY SYSTEMS, INC., AND
THIRD NATIONAL BANK OF EAST TENNESSEE
SPECIAL ACCOUNT AGREEMENT FOR USE WITH THE
CHECKS-PAID METHOD OF LETTER-OF-CREDIT FINANCING**

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(8) DOE, the Contractor, or the Institution may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.

(9) DOE or the Contractor may terminate this Agreement at any time upon 30 days' notice to the Institution if DOE or the Contractor, or both parties, find that the Institution has failed to substantially perform its obligations under this Agreement or that the Institution is performing its obligations in a manner that precludes administering the program in an effective and efficient manner.

(10) Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement, referenced in Recital a, between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Institution shall be terminated automatically upon the delivery of written notice to the Institution.

(11) In the event of termination, the Institution agrees to retain the Contractor's special demand deposit account for an additional 90-day period to allow for clearance of outstanding checks. During this 90-day period, DOE shall place on deposit in that account sufficient funds to cover all outstanding checks presented for payment.

During the 90-day period, it is further understood that:

- (a) The Institution shall maintain collateral in an amount sufficient to collateralize the highest balance in the account, less Federal Deposit Insurance Corporation coverage on the accounts, and that no cost of such collateralization shall accrue to the contractor or the DOE.
- (b) All service charges shall be consistent with the amounts reflected in this Agreement.
- (c) No charge will be made for any FDIC or other depository insurance assessed.
- (d) All terms and conditions of the aforesaid bid submitted by the Institution that are not inconsistent with this 90-day additional term shall remain in effect.
- (e) This Agreement shall continue in effect, with exception of the following:
 - 1. Letter of Credit (Covenant 5)
 - 2. The term of this Agreement (Covenant 7)
 - 3. Termination of Agreement (Covenant 8 and 9)

The Institution has submitted the forms entitled "Technical Representations and Certifications." "Schedule of Bank Processing Charges using the monthly Explicit Fee method of compensation" (Exhibit 2). These forms have been accepted by the Contractor and the Government and are incorporated herein with the document entitled "Financial Institution's Information on the Checks-Paid Letter of Credit," as an integral part of this Agreement.

**LOCKHEED MARTIN ENERGY SYSTEMS, INC., AND
THIRD NATIONAL BANK OF EAST TENNESSEE
SPECIAL ACCOUNT AGREEMENT FOR USE WITH THE
CHECKS-PAID METHOD OF LETTER-OF-CREDIT FINANCING**

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IN WITNESS WHEREOF the parties hereto have caused this Agreement, which consists of 5 pages, including the signature pages, to be executed as of the day and year first above written.

THE UNITED STATES OF AMERICA

BY Steven W. Morrell
STEVEN W. MORRELL, CONTRACTING OFFICER

9/28/95
DATE

LOCKHEED MARTIN ENERGY SYSTEMS, INC.

BY Francisco A. Figueroa
FRANCISCO A. FIGUEROA, VICE PRESIDENT
BUSINESS MANAGEMENT AND ADMINISTRATION

9/26/95
DATE

THIRD NATIONAL BANK OF EAST TENNESSEE

BY Patti M. Fogarty
PATTI M. FOGARTY, VICE PRESIDENT

9/27/95
DATE

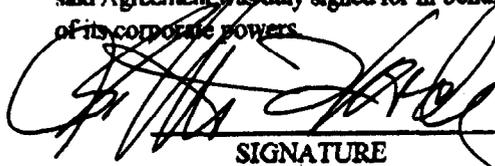
**LOCKHEED MARTIN ENERGY SYSTEMS, INC., AND
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NOTE-The contractor if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, G. Wilson Horde, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that Francisco A. Figueroa, who signed this Agreement on behalf of the Contractor, was then Vice President of said corporation; and that said Agreement was duly signed for in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

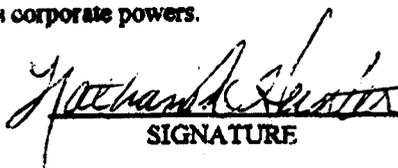


SIGNATURE (Corporate Seal)

NOTE-Financial Institution, if a corporation, should cause the following Certification to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and Certificate.

CERTIFICATE

I, Nathan A. Hunter, certify that I am the Senior Vice President of the corporation named as Institution herein; that Patti M. Fogarty, who signed this Agreement on behalf of the Institution, was then Vice President of said corporation; and that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body and its within the scope of its corporate powers.



SIGNATURE (Corporate Seal)

Contract No. DE-AC05-96OR22464

APPENDIX C

TREATIES AND INTERNATIONAL AGREEMENTS



**DEPARTMENT OF ENERGY RESEARCH AND DEVELOPMENT BILATERAL AGREEMENTS
ALL ACTIVE AGREEMENTS**

Index	Start/End Dates	Country	Type	Principal Subjects
18	12/20/74 6/31/91 Extending	Germany	Umbrella	Radioactive Waste Management
	6/3/75 6/1/92 Renegotiating	Italy		Geothermal Research and Development
31	9/29/77 None	Germany	Letter	Nuclear Materials Safeguards/Physical Security
38	1/31/79 4/30/01	China	Umbrella	High Energy Physics
41	2/16/79 None	Mexico	Intergovernmental	Science and Technology
42	5/2/79 2/1/00	Japan	Intergovernmental	Energy and Related Fields
48	8/24/79 2/1/95	Japan	Project Under #42	Fusion Energy/Coordinating Committee
50	8/28/79 8/28/96	Japan (JAERI)	Project Under #42/48	Fusion Energy/Doublet III
58	11/11/79 2/1/95	Japan	Project Under #42	High Energy Physics
64	3/6/80 9/8/98	Venezuela	Umbrella	Energy R&D
73	7/10/80 9/8/98	Venezuela	Project I Under #64	Heavy Crude Characterization
74	7/10/80 9/8/98	Venezuela	Project II Under #64	Enhanced Oil Recovery Supporting Research
75	7/10/80 9/8/98	Venezuela	Project III Under #64	Enhanced Oil Recovery Evaluation
81	9/9/80 9/9/00 Renegotiating to extend + 5 years	Sweden	Umbrella	Radioactive Waste Management

**DEPARTMENT OF ENERGY RESEARCH AND DEVELOPMENT BILATERAL AGREEMENTS
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Index	Start/End Dates	Country	Type	Principal Subjects
82	9/29/80 9/8/98	Venezuela	Project IV Under #64	Enhanced Oil Recovery Thermal Processes
90	9/30/81 2/1/95	Japan	Project Under #42	Photosynthesis
94	11/6/81 10/25/99	South Korea	Umbrella (A)	Conservation
95	11/6/81 10/25/99	South Korea	Umbrella (B)	Solar Energy
96	11/6/81 6/13/99	South Korea	Umbrella (C)	Coal R&D
97	1/28/82 1/6/00 Renegotiating as to IPR	European Union	Umbrella	Nuclear Materials Safeguards
100	2/5/82 9/8/98	Venezuela	Project VIII Under #64	Coal Preparation and Combustion
	3/00/82 3/00/00	Mexico	Umbrella	Sister lab arrangement
107	8/25/82 8/25/96 Renegotiating	Canada	Umbrella	Radioactive Waste Management
110	10/6/82 10/6/92 Renegotiating	European Union	Umbrella	Radioactive Waste Management
113	12/17/82 / /	Commission of the Euratom	Letters of Cooperation	Renewable Energy Sources
114	1/24/83 2/1/95	Japan	Intergovernmen tal Under #42	Fusion Energy
123	5/11/83 4/30/01	China	Umbrella	Nuclear Physics and Magnetic Fusion
134	11/8/83 2/1/95	Japan (JAERI)	Project Under #114	Fusion Energy

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Index	Start/End Dates	Country	Type	Principal Subject
137	3/14/84 9/8/98	Venezuela	Project X Under #64	Training of Petroleum Engineers
140	4/26/84 6/20/98	Japan	Project Under #249	Electric Field Effects
157	4/16/85 4/30/01	China	Umbrella	Fossil Energy R&D
158	4/19/85 9/23/96 Renegotiating	Switzerland	Umbrella	Radioactive Waste Management
159	5/14/85 6/11/00	United Kingdom	Project Under #278	Energy-Related Information
171	12/12/85 None	Spain	Umbrella	Science and Technology
176	3/13/86 4/30/01	China	Project I Under #123	IPR/Nuclear Physics and Magnetic Fusion
265	5/11/86 4/11/98	Australia	Project Under #242	Oil Shale Research
182	5/19/86 2/1/95	Japan	Project Under #42	Coal R&D
187	07/07/86 07/07/91 Renegotiating	European Union	Umbrella	Health & Environmental Effects of Radiation
195	12/3/86 12/3/96 Renegotiating	Japan	Umbrella	Radioactive Waste Management
196	12/4/86 12/4/96 Renegotiating	Canada	Umbrella	Energy R&D
197	12/15/86 12/15/96 Renegotiating	Commission of the Euratom	Umbrella	Magnetic Fusion Power System
198	12/24/86 12/24/96 Renegotiating	Canada	Project I Under #196	IPR/Information/Personnel Exchange

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Index	Start/End Dates	Country	Type	Principal Subjects
	00/00/87 00/00/02	Mexico	Umbrella	Exchange of Technical Information of the Cooperation in the Field of Air Quality Research
199	2/4/87 2/13/95 Renegotiating	Saudi Arabia	Umbrella	Renewable Energy R&D
203	5/5/87 12/31/91 Renegotiating	European Union	Project Under #197	JET Pellet Fueling
204	5/6/87 5/7/97	Commission of the Euratom	Project Under #197	Fusion Research and Development: Tore Supra (CEA)
216	8/14/87 9/8/98	Venezuela	Project XII Under #64	Geochemistry
217	8/19/87 4/30/01	China	Project Under #157	Atmospheric Trace Gases
222	9/24/87 9/24/97	Individually with: Denmark, Finland, Norway, Sweden	Project	Exchange of Information
224	9/28/87 9/28/97	Poland	Umbrella	Science and Technology
226	10/13/87 4/30/01	China	Project IV Under #157	Coal Preparation and Waste Stream Utilization
227	10/13/87 4/30/01	China	Project V Under #157	Atmospheric Fluidized Bed Combustion Information Exchange
228	10/16/87 2/1/95	Japan	Project Under #42	Coal R&D
231	11/19/87 11/19/92 Renegotiating	Canada	Umbrella	Magnetic Fusion
236	2/16/88 2/16/98	Canada	Project II Under #196	Natural Gas Hydrates
239	2/29/88 9/8/98	Venezuela	Project XIII Under #64	Microbial Enhanced Oil Recovery

**DEPARTMENT OF ENERGY RESEARCH AND DEVELOPMENT BILATERAL AGREEMENTS
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Index	Start/End Dates	Country	Type	Principal Subjects
242	4/11/88 4/11/98	Australia	Umbrella	Energy R&D
243	4/14/88 12/31/91 Renegotiating	European Union	Project Under #197	Collaborative Particle Control Program
247	6/10/88 4/11/98	Australia	Project Under #242	Alternative Fuels
249	6/20/88 6/20/98	Japan	Intergovernmental	Research and Development in Science and Technology
253	8/26/88 8/26/98	United Kingdom	Project	Gas Cooled Reactor Graphite Technology
257	12/19/88 9/19/04	France	Umbrella	High Energy Laser Matter Physics R&D
258	12/21/88 12/21/98	Japan (Monbusho)	Project Under #115	Data Link and Data Link Projects for Fusion
260	1/13/89 4/11/98	Australia	Project Under #242	Research-in-Progress
261	1/31/89 12/15/96	European Union	Project Under #197	Fusion - Fuel Processing
264	2/16/89 9/8/98	Venezuela	Project XIV Under #64	Exchange of Energy Related Personnel
266	6/1/89 None	Costa Rica	Project	Clean Coal Technologies
270	1/11/90 1/11/95	Japan (JAERI)	Project IX Under #134	Fusion R&D Collaborative Program on the Data Link
272	3/15/90 3/15/95 Renegotiating	Poland	Project	Clean Coal Technology at Powerplant in Krakow
273	3/30/90 9/15/98	Japan (PNC)	Project (SMA-1) Under #249	NDA for Feed Pu Storage in Auto Production of MOX

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Index	Start/End Dates	Country	Type	Principal Subjects
274	3/30/90 9/15/98	Japan (PNC)	Project (SMA-2) Under #249	Authentication and Identification of MOX Fuel
275	3/31/90 9/15/98	Japan (PNC)	Project (SMA) Under #240	Pu Isotopic and Concentration for Chemical Process
276	3/31/90 09/15/98	Japan	Project	Fissile Inventory Verification Isotope Dilution
277	6/1/90 6/1/97	Russia	Umbrella	S&T Cooperation Peaceful Uses of Atomic Energy
278	6/11/90 6/11/00	United Kingdom	Umbrella	Energy R&D
279	6/25/90 / /	Chile	Protocol of Intent	Development of Clean Coal Technologies
280	7/2/90 7/2/95 Ongoing	Japan (JAERI)	Project	Nuclear Materials Control Accountancy Protection
281	7/23/90 9/15/98	Japan (PNC)	Project (SMA) Under #249	NDA Tech Process Holdup Pu Conversion Development
287	12/8/90 12/8/00	Venezuela	Umbrella	Science and Technology
288	1/25/91 9/15/98	Japan (PNC)	Project (SMA) Under #249	Safeguards Techniques for Monitors -- JOYO Reactor
289	1/31/91 9/15/98	Japan (PNC)	Project (SMA) Under #249	Safeguards Techniques for Monitors -- MONJU Reactor
292	3/01/91 12/15/96	European Union	Project Under #197	Fast Ions and Alpha Particles
293	3/26/91 9/15/98	Japan (PNC)	Project (SMA) Under #249	Pu Storage by Passive Gamma Spectroscopy
296	9/23/91 9/23/96	Switzerland	Project III Under #158	Site Characterization, Repository Performance, Validation

**DEPARTMENT OF ENERGY RESEARCH AND DEVELOPMENT BILATERAL AGREEMENTS
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Index	Start/End Dates	Country	Type	Principal Subjects
299	10/16/91 10/16/96 Renegotiating	Poland	Umbrella	Krakov Clean Fossil Fuels and Energy Efficiency
300	10/22/91 10/22/00	Czech	Intergovernmental: S&T	Fusion Energy
	10/22/91 10/22/00	Slovak	Intergovernmental: S&T	Fusion Energy
	1/15/92 / /	Indonesia	Intergovernmental	Scientific Research and Technology Development
303	4/16/92 4/16/97	Japan (JAERI)	Project (XI) Under #134	Test Negative Ion Sources Accelerators . . . Injectors
	5/7/92 5/7/97 Self-Renewing Every Five Years	Ukraine		Environmental Protection
305	6/17/92 6/17/97	Russia	Umbrella	Fuels and Energy
306	6/29/92 / /	Brazil (Ceara)	Protocol of Intent	Solar Energy Based Rural Electrification Program
307	6/29/92 / /	Brazil (Pernambuco)	Protocol of Intent	Solar Energy Based Rural Electrification Program
310	10/1/92 10/1/97	Australia	Umbrella	Nuclear Material Control Safeguards Application
312	12/16/92 12/16/97	Spain	Umbrella	Radioactive Waste Management
313	12/16/92 12/16/97	Sweden	Project Under #81	Site Characterization and Repository Performance
315	2/18/93 / /	Russia	Umbrella	Disposition HEU Extracted from Nuclear Weapons
317	7/21/93 7/21/97	Saudi Arabia	Annex II Under #199	Annex II: Assessment of Solar Radiation Resources

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Index	Start/End Dates	Country	Type	Principal Subjects
301	07/29/93 07/29/98	South Korea	Intergovernmental	Science and Technology
318	8/4/93 8/4/95	Japan (PNC)	Project (SMA-13) Under #249	SMA 13: Fuel Pin . . . MOX Fuel Fabrication Facility
319	9/2/93 9/2/95	Japan (PNC)	Project (SMA-14) Under #249	Video Motion Detection . . . PFPF Product Storage
321	9/15/93 9/15/98	Japan (PNC)	Umbrella	R&D Nuclear Materials Control and Accounting for Safeguards
322	10/1/93 10/1/98	Russia	Umbrella	Energy Efficiency and Renewable Energy
323	10/4/93 10/4/98	Italy	Intergovernmental	Science and Technology
324	1/14/94 1/14/99	Russia	Umbrella	Radioactive Contamination Health and Environment
325	1/27/94 12/31/97	Japan (PNC)	Project Under #249	Waste Measurement System Glove Box Accounting Systems
326	1/27/94 None	Japan (PNC)	Project Under #249	Upgraded Glove Box Accounting Systems
327	2/9/94 2/9/96	Saudi Arabia	Annex III Under #199	Assessment of Geothermal Energy Resources
330	4/8/94 / /	Ukraine	Statement of Intent	Shutdown Chernobyl Nuclear Power Plant
	04/12/94 04/12/99	China	Project IX Under #157	Clean Coal Technology Utilization
331	4/18/94 4/18/99	Argentina	Umbrella	International Safeguards Applications
332	4/18/94 4/18/99	Brazil	Umbrella	International Safeguards Applications
333	4/26/94 9/7/98	Venezuela	Project XV Under #64	Oil Recovery Information and Technology Transfer
334	5/12/94 4/11/98	Australia	Project Under #242	Bio-Electromagnetic Research

**DEPARTMENT OF ENERGY RESEARCH AND DEVELOPMENT BILATERAL AGREEMENTS
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Index	Start/End Dates	Country	Type	Principal Subjects
335	6/13/94 6/13/99	South Korea	Project Under #96	Fossil Energy Technology
	7/6/94 7/6/99	Estonia	Intergovern- mental	Science and Technology
	7/6/94 7/6/99	Latvia	Intergovern- mental	Science and Technology
	7/6/94 7/6/99	Lithuania	Intergovern- mental	Science and Technology
337	9/18/94 / /	Austria	Umbrella	Energy Efficiency/Conservation and Climate Change
338	9/24/94 / /	Pakistan	Statement of Intent 1	Fossil Fuel and New and Renewable Energy
339	9/24/94 / /	Pakistan	Statement of Intent 2	Climate Change
340	9/24/94 / /	Pakistan	Statement of Intent 3	Fossil Fuel and New and Renewable Energy
341	11/18/94 / /	Canada	Statment of Intent Under #196	Biennial Biomass Conference of the Americas
342	11/19/94 8/9/04	France	Project #1 Under #257	Megajoule-Class Solid State Lasers
343	11/19/94 8/9/04	France	Project #2 Under #257	Megajoule-Class Solid State Laser Technology
344	12/13/94 / /	Chile	Statement of Intent	Renewable and Energy Efficiency Technologies
	02/10/95 02/10/00	Slovenia	Intergovernmen- tal	S&T
345	2/23/95 / /	China	Umbrella	Bilateral Energy Consultations
346	2/23/95 / /	China	Statement of Intent A	Energy Information Exchange

**DEPARTMENT OF ENERGY RESEARCH AND DEVELOPMENT BILATERAL AGREEMENTS
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Index	Start/End Dates	Country	Type	Principal Subjects
347	2/23/95 / /	China	Statement of Intent B	Research Reactor Fuel
348	2/23/95 2/23/00	China	Project XII Under #157	Regional Climate Research
349	2/23/95 2/23/00	China	Project XI Under #157	Coal Bed Methane Recovery and Utilization
350	2/23/95 2/23/00	China	Umbrella	Energy Efficiency and Renewable Energy Development and Utilization
352	3/7/95 / /	Chile	Statement of Intent	Control Emissions of Greenhouse Gases
353	3/13/95 3/13/00	Estonia	Umbrella	Technical Cooperation Clean-up Paldiski Site
357	4/26/95 4/26/05	France	Umbrella	Accelerator Driven Technology
358	5/26/95 5/26/00	Italy	Umbrella	Energy R&D
359	6/15/95 / /	Russia	Project	Weapons Expertise for the Globus-M Project
360	6/16/95 / /	Russia	Project	Nonproliferation of Weapons/Weapons Expertise
	6/27/95 6/27/00	China	Project I Under #350	Renewable Energy Under 100 Counties Integrated Rural Energy Development Program in China
362	7/17/95 7/17/05	Japan (JAERI)	Project	Nuclear Research and Development
363	7/21/95 / /	Canada	Statement of Intent Under #196	Building Energy Simulation Tools
364	7/25/95 / /	United Kingdom	Statement of Intent	Nuclear Clean-Up
365	7/31/95 1/31/97	Japan (PNC)	Project (19) Under #321	Measuring Vitrified High Level Waste Canisters

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Index	Start/End Dates	Country	Type	Principal Subjects
367	8/21/95 8/21/00	Poland	Project	Environmental Restoration Hazardous Waste Management
368	8/25/95 8/25/20	South Africa	Umbrella	Peaceful Uses of Nuclear Energy
371	8/25/95 / /	South Africa	Umbrella	Sustainable Development Resource Center
372	8/25/95 / /	South Africa	Umbrella (2)	Renewable and Energy Efficiency Technologies
373	8/25/95 / /	South Africa	Statement of Intent 1	Renewable Energy (Guguletu Township)
374	8/25/95 / /	South Africa	Umbrella (3)	Electrification of Rural Clinics (Cape Town)
375	8/25/95 / /	South Africa	Statement of Intent 3	Renewable Energy (The Csir, South Africa)
376	9/19/95 9/19/00	Brazil	Umbrella	International Safeguards Applications
377	9/20/95 9/20/00	France	Umbrella	Radioactive Waste Management
379	10/8/95 10/8/00	France	Umbrella	Radioactive Waste Management
380	10/30/95 / /	Ghana	Statement of Intent	Peaceful Uses of Nuclear Energy
	11/01/95 11/01/00	Croatia	Intergovernmental	Science and Technology
381	12/05/95 12/05/00	South Africa	Umbrella	Energy Policy - S&T Development
382	12/05/95 / /	South Africa	Statement of intent	Cooperative Agreement with Provincial Governments
383	12/05/95 / /	South Africa	Statement of intent	Mitigation of Greenhouse Gases
384	02/01/96 02/01/01	Israel	Umbrella	Framework for Collaboration in Energy R&D

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Index	Start/End Dates	Country	Type	Principal Subjects
316	3/26/96 3/26/97	Japan (PNC)	Project Under #195	Characterization and Predictive Technologies
355	4/11/96 1/31/00	Japan (PNC)	Project	Nuclear Technologies
385	05/03/96 05/03/01	Japan	Umbrella	Science and Technology
386	05/07/96 05/07/01	Mexico	Umbrella	Energy Cooperation
387	05/24/96 05/24/06	Argentina	Umbrella	Radioactive and Mixed Waste Management
388	06/14/96 06/14/01	South Korea	Umbrella - MOU	Cooperative Lab Relationship
389	06/14/96 06/14/01	South Korea	Project	Fusion Energy Research
	08/01/96 08/01/06	Argentina	Umbrella	Energy Technology
390	09/05/96 / /	United Kingdom	Statement of intent	Environmental Restoration and Waste Management
250	09/16/96 09/16/01	Russian Federation	Umbrella	Russian Nuclear Reactor Design and Safety
	09/16/96 09/16/01	Russian Federation	Umbrella	Russian-American Fuel Cell Consortium
286	9/16/96 9/16/01	Russian Federation	Umbrella - MOC	Environmental Restoration and Waste Management
294	9/16/96 9/16/01	Russian Federation	Umbrella - MOU/MOC	Magnetic Confinement Fusion
391	09/30/96 / /	Brazil	Stament of intent	Clean Coal Technologies
392	10/01/96 10/01/01	Ghana	Umbrella	Energy Policy and S&T Development
	10/25/96 10/25/01	China	Project IV Under #350	Renewable Energy/Business Development

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Index	Start/End Dates	Country	Type	Principal Subjects
	10/25/96 10/25/01	China	Project III Under #350	Energy Efficiency
	11/01/96 11/01/01	Macedonia	Intergovern mental	S&T
	11/25/96 11/25/01	China	Project II Under #350	Wind Energy Development in China
	12/11/96 7/3/01	Japan (NUPEC)	Implementing Arrangement	Light Water Reactor (LWR) Associated Technologies
86	12/16/96 12/15/00	Finland	Umbrella	Energy R&D
295	02/07/97 02/07/02	Russian Federation	Umbrella	Fundamental Properties of Matter

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Term of Agreement	Countries	Type of Agreement	Agreement Subject Area	DOE Record #
3/20/74 9/16/96 Renegotiating	Australia, Austria, Belgium, Canada, Denmark, Commission of the Euratom, Finland, France, Germany (unified), Greece, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom	Umbrella	Nuclear data and computer programs	90
11/18/74 Indefinite	Australia, Austria, Belgium, Canada, Denmark, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Spain, Sweden, Switzerland, Turkey, United Kingdom	Umbrella/annex	Establishment of International Energy Program through implementation of an International Energy Agency	
1/1/75 1/1/2050	Australia, Austria, Belgium, Canada, Denmark, Commission of the Euratom, Finland, Germany (unified), Italy, Japan, Netherlands, Spain, Sweden, United Kingdom	Implementing/ project	Coal research	154
7/28/75 1/1/2050	Australia, Belgium, Canada, Denmark, Finland, Germany (unified), Greece, Italy, Japan, Netherlands, New Zealand, Norway, Sweden, Switzerland, Turkey, United Kingdom	Implementing/ project	Energy conservation in buildings and community systems	49
11/20/75 1/1/2050	Austria, Belgium, Germany, Italy, Netherlands, Spain, Sweden, Turkey, United Kingdom	Implementing/ project, annex	Establishment of the Coal Technical Information Service	154
12/31/75 1/1/2050	Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Ireland, Italy, Japan, Netherlands, New Zealand, Spain, Sweden, United Kingdom (DOI/USGS, DOE and BLM)	Establishment of Coal Research Service Center Project	This Agreement incorporates four previous implementing agreements on: Mining Technology Clearinghouse (DOI/BLM), Coal Economic Assessment Services (DOE), Coal Technical Information Services (DOE, DOI/USGS), and World Coal Resources and Reserves Data Bank (DOI/USGS)	154
12/20/76 1/00/2050	Australia, Austria, Belgium, Canada, Commission of the Euratom, Denmark, Finland, Germany (unified), Greece, Italy, Japan, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom	Implementing/ project, annexes	Solar heating and cooling systems	11

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Term of Agreement	Countries	Type of Agreement	Agreement Subject Area	DOE Record #
3/16/77 Indefinite	Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Norway, Sweden, Switzerland, United Kingdom	Implementing/ project, annex	Energy conservation/ emissions reduction in combustion	
3/16/77 Indefinite	Austria, Germany, Sweden, Switzerland	Implementing/ project, annex	Energy conservation through energy cascading	
3/16/77 1/1/2050	Canada, Germany (unified), Italy, Japan, Norway, Sweden, Switzerland, United Kingdom	Annex	Combustion system modeling and diagnostics	33
6/28/77 1/1/2050	Germany, Netherlands, Norway, Sweden, Switzerland, United Kingdom	Implementing/ project, annex	Energy conservation in heat transfer and heat exchangers	26
6/28/77 1/1/2050	Austria, Canada, Denmark, Germany (unified), Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom	Implementing/ project, annexes	Wind turbine systems	30
10/6/77 12/31/96	Germany, Israel, Spain, Switzerland	Implementing/ project, annexes	Solar power and chemical energy systems	
10/6/77 12/30/02	Canada, Commission of the Euratom, Japan, Switzerland, Turkey	Implementing/ project, annex	Fusion energy, plasma wall interaction in Textor	110
10/6/77 Indefinite	Germany, Japan, Sweden, Switzerland, United Kingdom	Implementing/ project, annex	Man-made geothermal energy systems	
10/6/77 1/1/2050	Germany (unified), Japan, Switzerland	Implementing/ project, annex	Superconducting magnets for fusion power	107
10/6/77 1/00/2050	Belgium, Canada, EEC, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom	Implementing/ project, annexes	Production of hydrogen from water	18
2/18/78 1/1/2050	Belgium, Canada, Finland, Japan, Netherlands, New Zealand, Norway, Spain, Sweden, United Kingdom	Implementing/ project, annexes	Energy conservation in the pulp and paper industry	53
4/00/78 Indefinite	Belgium, Canada, Ireland, Sweden	Implementing/ project, annex	Forestry energy	
4/13/78 Indefinite	Canada, Ireland, Japan, United Kingdom	Implementing/ project, annex	Wave power R&D	
5/24/78 Indefinite	Austria, Belgium, Canada, EEC, Finland, Germany, Ireland, Italy, Japan, New Zealand, Norway, Portugal, Sweden, Switzerland, United Kingdom	Implementing/ project	Biomass conversion technical information service	58

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Term of Agreement	Countries	Type of Agreement	Agreement Subject Area	DOE Record #
7/27/78 Indefinite	Germany, New Zealand, Sweden, United Kingdom	Implementing/ project, annex	Energy conservation in cement manufacture	
7/27/78 Indefinite	Austria, Belgium, Canada, Denmark, Finland, France, Germany (unified), Italy, Ireland, Japan, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom	Implementing/ project, annex	Advanced heat pump systems for energy conservation	39
9/22/78 Indefinite	Belgium, EEC, Denmark, Germany, Netherlands, Sweden, Switzerland	Implementing/ project, annexes	Energy conservation through energy storage	60
1/1/79 1/1/2050	Canada, Venezuela	Other	Heavy crude and tar sands	160
5/22/79 1/1/2050	Germany, Japan, Sweden	Implementing/ project, annexes	High temperature materials for automotive engines	45
5/22/79 1/1/2050	Australia, Austria, Canada, Denmark, Egypt, France, Germany, Japan, Norway, United Kingdom	Implementing/ project, annex	Enhanced recovery of oil	159
5/22/79 Indefinite	Italy, Mexico, New Zealand	Implementing/ project, annex	Geothermal equip- ment	
10/21/80 10/21/94 ongoing agreement	Canada, EEC, Japan, Switzerland	Implementing/ project, annex	Radiation Damage in Fusion Materials	115
11/13/80 Indefinite	Australia, Belgium, Denmark, EEC, Germany, Italy, Norway, Sweden, Switzerland	Implementing/ project, annexes	Energy technology systems analysis	268
1/1/81 1/1/2049	Canada, Japan, Netherlands, Spain, Sweden, United Kingdom	Implementing/ project, annex	Coal/oil liquid mixtures	181
5/21/84 1/1/2050	Belgium, Canada, Finland, France, Italy, Japan, Netherlands, New Zealand, Norway, Sweden, United Kingdom	Implementing/ project, annexes	Alternative motor fuels	55
3/27/85 Indefinite	Australia, Canada, Denmark, Finland, Germany, Italy, Netherlands, Sweden, United Kingdom		Coal Combustion Sciences	136
1/26/87 Indefinite	Canada, Denmark, Finland, France, Germany, Italy, Japan, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom		Energy technology data exchange	3
3/15/87 3/15/93 ongoing agreement	Canada, Norway, United Kingdom		Fossil Fuel Multiphase Flow Sciences	174

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Term of Agreement	Countries	Type of Agreement	Agreement Subject Area	DOE Record #
3/18/88 3/18/98	Australia, Belgium, Canada, Denmark, Finland, Italy, Japan, Korea, Netherlands, New Zealand, Norway, Sweden, Switzerland, United Kingdom	Implementing/ project, annexes	Information Center for the Analysis and Dissemination of Demonstrated Energy Technologies (CADDET)	44
1/1/89 1/1/2050	Austria, Belgium, Canada, Denmark, Finland, Ireland, Italy, Japan, New Zealand, Norway, Sweden, United Kingdom	Implementing/ project, annex	Bioenergy research and development	58
4/3/90 4/2/00	Commission of the Euratom, Japan	Implementing/ project	Fusion Energy/ Reversed Field Pinches (RFP)	123
4/3/90 4/2/00	Commission of the Euratom, Japan	Annex 1	Fusion Energy/ Reversed Field Pinches (RFP)	124
4/3/90 4/2/00	Commission of the Euratom, Japan	Annex 2	Fusion Energy/ Reversed Field Pinches (RFP)	119
10/20/91 10/19/01	Canada, Denmark, Commission of the Euratom, Finland, Italy, Japan, Netherlands, Norway, Spain, Sweden, United Kingdom	Implementing/ project, annex	Greenhouse gases derived from fossil fuel use	231
7/6/92 7/6/97	Canada, Commission of the Euratom, Japan	Implementing/ project, annexes	Environmental, safety and economic aspects of fusion power	232
7/6/92 7/6/97	Canada, Commission of the Euratom, Japan	Umbrella	Environmental and economic aspects of fusion power	266
7/21/92 7/21/98	Commission of the Euratom, Germany, Japan, the former Soviet Union	Umbrella	International Thermonuclear Experimental Reactor (ITER)	233
11/24/92 11/11/98	Austria, Canada, Denmark, EEC, Finland, France, Germany, Israel, Italy, Japan, Korea, Netherlands, Portugal, Sweden, Switzerland, Turkey, United Kingdom	Implementing/ project, annexes	Photovoltaic power systems	
3/21/94 7/21/98	Commission of the Euratom, Germany, Japan, the former Soviet Union	Project under #233	ITER Engineering Design Activities	329
6/13/94 6/13/99	Canada, Japan	Implementing/ project, annex	Nuclear technology of fusion reactors	
7/12/94 7/12/99	Austria, Canada, France, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom	Implementing/ project, annexes	Electric vehicle (EV) technologies	

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Term of Agreement	Countries	Type of Agreement	Agreement Subject Area	DOE Record #
9/16/96 9/16/01	Former Soviet Union, Russian Federation	MOU/MOC	Magnetic confinement fusion	91
9/16/96 9/16/01	Russian Federation, Ukraine	Umbrella	Russian Nuclear Reactor Design and Safety	250
2/7/97 2/7/02	Former Soviet Union, Russian Federation	Umbrella	Fundamental Properties of Matter	126

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APPENDIX D

AGREEMENT REGARDING RCRA PERMITS

AGREEMENT REGARDING RCRA PERMITS

Whereas, on May 8, 1990, the Secretary of Energy issued SEN 22-90 which set forth DOE's policy regarding signatures on permits under the Resource Conservation and Recovery Act (RCRA).

Whereas, Lockheed Martin Energy Research Corporation (LMER) may, from time to time, become the co-operator for one or more RCRA permits issued to the Oak Ridge National Laboratory.

Whereas, LMER is willing to accept, subject to the terms and conditions of this Agreement regarding RCRA Permits, the designation of "co-operator" for execution of such RCRA permits, reports and other documentation; and

Whereas, the purpose of this Agreement is to document understandings reached by the parties on their respective roles and responsibilities for compliance with RCRA at the Government-provided facilities ("Facilities") managed by LMER for DOE and not to amend the substantive terms and provisions of the Contract.

NOW THEREFORE, the United States Department of Energy and LMER agree as follows:

This Agreement is based on the fact that there are some aspects of facility operation (such as capital expenditure and other funding, policy and scheduling decisions, and general oversight) for which DOE is responsible, and other aspects of facility operation (such as the daily hands-on conduct of waste management activities and implementation of approved plans, schedules, and budgets) for which LMER or both DOE and LMER are responsible.

1. RCRA Permits

- a. Where, under RCRA, execution of a permit, permit application, report or other documentation is required by the "owner" DOE will sign as owner; where the same is required by the "operator" DOE will sign as operator, and LMER will sign as co-operator. The following explanatory statement will accompany the dual signatures of DOE and LMER (either in the permit application or the transmittal letter to the regulatory agency):

"The Department of Energy has signed as "owner and operator" and Lockheed Martin Energy Research Corporation (LMER) has signed as cooperator, this document for the permitted facility. The Department has determined that dual signatures best reflect the actual apportionment of responsibility under which the Department's RCRA responsibilities are for policy, programmatic, funding and scheduling decisions, as well as general oversight; and, the contractor's RCRA responsibilities

for day-to-day operations, (in accordance with general directions given by DOE as part of its general oversight responsibility), including but not limited to, the following responsibilities: waste analyses and handling, monitoring, record keeping, reporting, and contingency planning. For purposes of the certification required by 40 C.F.R. Section 270.11(d), the Department's and LMER's representatives certify, to the best of their knowledge and belief, the truth, accuracy and completeness of the application for their respective areas of responsibility."

- b. DOE and LMER will use their best efforts to secure written permit terms and formal enforcement understanding with each state and federal agency involving a RCRA permit application or compliance agreement that recognizes the principles set forth in 1.a and 3.a. in general and in particular that LMER's permit obligations as "co-operator" are not co-extensive with those of DOE as owner and operator. Further, any compliance or enforcement action against LMER (whether DOE is also a named party or not) requiring specific performance of an act or undertaking beyond LMER funding authorization or responsibilities as set forth in La shall be deemed a compliance action against the DOE as the real party in interest and the DOE shall in good faith recognize the same and take appropriate legal action to protect LMER. This Agreement does not alter the existing contractual legal status of the Parties under the Contract. LMER specifically reserves the right to refuse to sign as co-operator any permit not acceptable to it and which is inconsistent with the Contract, the commitments set forth in this Agreement, or evaluations of funding needs.

2. Interactions with the Regulatory Agencies

- a. The parties agree that the specific responsibilities of DOE and LMER regarding compliance-deliverable documents are as stated in a document entitled "Responsibilities for RCRA Compliance-Deliverable Documents," which is attached hereto and incorporated herein as Attachment 1. Attachment I may be amended at any time by mutual agreement of the parties. In the event that DOE fails in a timely manner (including all time periods referred to in Attachment 1) to take action necessary for compliance in a matter for which LMER has joint responsibility, LMER may take such action as it deems appropriate and as authorized under the Contract.
- b. LMER shall assume the lead responsibility for routine interaction with the regulatory agencies involving the ongoing operations of the Facilities. These interactions shall include meetings and other consultations to resolve interpretation of regulatory requirements (which do not have policy implications for other DOE facilities; those interpretations which have policy implications will be handled, in a 2-timely manner,

in accordance with paragraph c. below) and, subject to the availability of funds, to obtain agreement with the regulators on plans and implementation schedules for meeting regulatory requirements. LMER shall also be responsible for arrangements for inspections by the regulators of the ongoing operations at the Facilities. DOE will have the opportunity to be present and participate in all meetings or other interactions with the regulators where plans, schedules, projects, or activities which require additional funding will be discussed. Any agreement containing commitments which necessitate additional funding must be approved by DOE before its execution.

- c. DOE will assume lead responsibility for interaction with the regulatory agencies for non-routine activities at the Facilities such as corrective actions under RCRA, NEPA decisions relative to RCRA permits, and issues related to policy, overall scheduling, or commitment of funds. LMER will have the opportunity to be present and participate in all such interactions.
- d. Each party will document its communications, whether formal or informal, with regulatory agencies and furnish a copy thereof to the other party and each party will provide the other with sufficient advance notice and information about any meetings to enable the other party to participate at its option.

It is recognized that successful implementation of the foregoing is contingent upon close coordination and consultation between DOE and LMER since it is impossible to precisely specify their respective roles and responsibilities in this Agreement. Each party commits to work with the other to achieve this goal.

3. Environmental Costs and Liabilities

- a. DOE hereby agrees the allowability of environmental costs and liabilities shall not be diminished by reason of LMER's execution of environmental permits or other documents as the co-operator of the Facilities. In particular DOE agrees that this Agreement does not represent the assumption of liability to third parties as set forth in the Contract.. Costs associated with liability to third parties are allowable unless they result from willful misconduct, lack of good faith, or failure to exercise prudent business judgement on the part of any of the Contractor's managerial personnel in accordance with the Clause of the Contract entitled INSURANCE LITIGATION AND CLAIMS. This Agreement and the designation of LMER as "co-operator" shall not impute to LMER DOE's liability for violations of or failures, if any, to comply with federal or state laws and regulations that are the direct or indirect result of DOE's past, present, or future acts or omissions.
- b. Fines and penalties and the costs associated with them are generally unallowable costs subject to the terms and conditions of the Contract.

- c. Any requirements for DOE approval of settlement of claims against LMER will be acted upon in a timely manner.

4. Bonds or Insurance Requirements

DOE agrees that if bonds or insurance are required as a condition for permits, the cost of such bonds or insurance are allowable costs in accordance with Contract Clause entitled ALLOWABLE COSTS AND FEE. In the event that such insurance or bonding is not available or if DOE determines such insurance or bonding to be excessive, unreasonable or not authorized by law or regulation, DOE will provide the regulatory agencies an acceptable form of assurance of financial responsibility. In no event will LMER or Lockheed Martin Corporation be required to use corporate resources or a corporate guarantee to satisfy any such regulatory requirements.

5. Assignment of Permits

DOE agrees that in the event of termination or expiration of the Contract, DOE will: (1) require the replacement contractor in the solicitation to accept assignment and transfer of all RCRA permits and Consent Decrees, or consent agreements associated therewith; (2) make other arrangements for assignment and transfer to the replacement contractor; or (3) DOE will accept such responsibility. LMER shall have no further responsibility or liability for future compliance or implementation with respect to any permit, permit application, consent decree, compliance order, consent order, or other document which it may have executed as co-operator prior to expiration or termination, in whole or in part, of the Contract. In no event shall LMER be the co-operator with respect to any permit, consent decree, compliance order, or consent order after the effective date of contract termination or expiration and DOE will submit a revised permit which omits LMER as a named co-operator. Any claim or liability, relating to LMER's status as co-operator, including but not limited to fines, penalties, judgments, clean-up costs, which may result after termination or expiration of the Contract and not resulting from the acts or omissions of the contractor will be governed by the provisions of the Contract.

6. Execution of Requirements

Consistent with the Contract, LMER in performance of its duties as a co-operator under this Agreement will take such actions as it reasonably deems necessary, applying the same judgment, skill, and care it would in the conduct of its own business, including cessation or discontinuation of operation in the management of the Facilities, and defense of administrative, civil or criminal actions by state or federal agencies.

7. Funding

LMER will provide to DOE its evaluation of funding needs for RCRA activities required by laws and regulations, including any agreements or commitments under RCRA and by the Contract. If DOE does not allocate funding to meet all identified budget requirements, LMER may take such actions as necessary, including discontinuance of operations and work effort and/or attempt to reallocate funds from DOE authorized Contract funds to perform work necessary to comply with environmental requirements. Nothing contained herein shall be construed to imply that Lockheed Martin Corporation or LMER is obligated in any way to provide funds to perform this Agreement.

8. Legal Counsel

DOE shall review and approve requests submitted by LMER for retention of legal counsel to provide advice and consultation, or representation reasonably necessary for issues arising during performance of the work under and within the scope of the Contract. Unless retention of counsel is disapproved costs of such legal counsel shall be allowable in accordance with the current provisions of the Contract. Approval of such outside legal counsel shall not be in derogation of the provisions of the Clause entitled INSURANCE - LITIGATION AND CLAIMS of the Contract requiring notice to DOE of specific actions.

9. Notices

- a. All requirements for notices, documents, reports, including those under Attachment 1, to be sent to DOE under this agreement will be satisfied by sending such notices to the following:

ORNL Site Manager
Department of Energy Oak Ridge National Laboratory
Post Office Box 2008
Oak Ridge, Tennessee 37831-6269
(423) 576-4523

- b. All requirements for notices to be sent to LMER under this agreement will be satisfied by sending such notices to the following:

Associate Director, Operations, Environment, Safety, and Health
Oak Ridge National Laboratory
Post Office Box 2008
Oak Ridge, Tennessee 37831-6260
(423) 574-8447

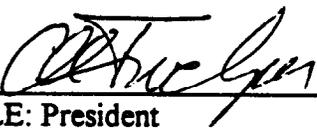
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the

6th day of December, 1995.

UNITED STATES OF AMERICA
SECRETARY OF ENERGY

By: 
TITLE: Manager

LOCKHEED MARTIN ENERGY
RESEARCH CORPORATION

By: 
TITLE: President

Attachment I

APPENDIX D

RESPONSIBILITIES FOR RCRA COMPLIANCE-DELIVERABLE DOCUMENTS

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
RCRA Part A Permit Application	LMER	LMER & DOE	DOE
RCRA Part B Permit Application (including all correspondence related to application and draft permit)	LMER	LMER & DOE	DOE
RCRA Permit-by-Rule notification	LMER	LMER & DOE	DOE
RCRA Permit Modification Requests (including notifications of planned changes, and approval requests for construction as-built drawings)	LMER	LMER & DOE	DOE
Permitting NOD Response			
- NODs issued to LMER	LMER	LMER	LMER
- NODs issued to DOE	LMER	DOE	DOE
- NODs issued to LMER & DOE	LMER	LMER & DOE	DOE
Permitting NOV Response			
- NOVs issued to LMER	LMER	LMER	LMER
- NOVs issued to DOE	LMER	DOE	DOE
- NOVs issued to LMER & DOE	LMER	LMER & DOE	DOE
RCRA Inspection NOD Response			
- NODs issued to LMER	LMER	LMER	LMER
- NODs issued to DOE	LMER	DOE	DOE
- NODs issued to LMER & DOE	LMER	LMER & DOE	DOE
RCRA Inspection NOV Response			
- NOVs issued to LMER	LMER	LMER	LMER
- NOVs issued to DOE	LMER	DOE	DOE
- NOVs issued to LMER & DOE	LMER	LMER & DOE	DOE
RCRA not otherwise listed NOD/NOV Responses			
- NOD/NOV issued to LMER	LMER	LMER	LMER
- NOD/NOV issued to DOE LMER	LMER	DOE	DOE
- NOD/NOV issued to LMER and DOE	LMER	LMER & DOE	DOE

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
RCRA Rulemaking Petitions	LMER	LMER & DOE	DOE
RCRA Variance Requests per Rule	LMER	LMER & DOE	DOE
Administrative Order Response			
- Orders written to LMER	LMER	LMER	LMER
- Orders written to DOE	LMER	DOE	DOE
- Orders written to LMER & DOE	LMER	LMER & DOE	DOE
RCRA Annual Waste Report including:	LMER	LMER	LMER
- Hazardous Waste Notification			
- Hazardous Waste Stream Reports			
- Off-Site Shipping Report			
- Detail Report (receipts from off-site)			
- TSDR Summary Report			
- Precious Metal Recovery Activities Report			
- Recycling Activities Report			
- Treatability Study Shipments and Activities Report			
- Generator Annual Fee and Worksheet			
- TSD Annual Fee and Worksheet			
RCRA Waste Minimization Report (annual)	LMER	LMER	LMER
RCRA Transporter and Registration Fee (annual)	LMER	LMER	LMER
RCRA Groundwater Monitoring Well Report (annual)	LMER	LMER	LMER
RCRA Groundwater Surface Elevations Report (annual)	LMER	LMER	LMER
RCRA Groundwater Quarterly Analysis Report	LMER	LMER	LMER
Groundwater Concentrations Exceeding Appendix III Limits Report (as occurs)	LMER	LMER	LMER
Report of Groundwater Statistical Excursions (as occurs) including: Establishment of Compliance Monitoring Program, Establishment of Corrective Action Management Program	LMER	LMER	LMER

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
Inventory of Federal Hazardous Waste Activities per RCRA 3016 (biennial)	LMER	LMER	DOE
Report of Noncompliance that may Endanger Health and Environment (24 hours/5 days)	LMER	LMER	LMER
Report of Other Noncompliances (due w/monitoring reports)	LMER	LMER	LMER
Unmanifested Waste Reports	LMER	LMER	LMER
Closure Plans (including all correspondence related to comments and/or Notices of Deficiency)	LMER	LMER & DOE ¹	DOE
Notification of Closure (60 days prior to closure)	LMER	LMER	LMER
Certification of Closure (within 60 days of closure completion)	LMER	LMER	LMER
Closure Survey Plat Submittal	LMER	LMER & DOE	DOE
RCRA Transportation Manifest	LMER	LMER ² N/A	
Post-Closure Plan	LMER	LMER & DOE	DOE
Post Closure Permit Application (including all correspondence related to the application and draft permit)	LMER	LMER & DOE	LMER
Post-Closure Notices (within 60 days after each certification to Commissioner and local board) and (within 60 days of first and last closure certification for facility)	LMER	LMER	LMER

¹Does not require signature. LMER transmits to DOE with letter. DOE submits to regulator with letter.

²Note: signature is "On behalf of DOE."

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
Certification of Completion of Post-Closure Care (within 60 days after completion of post closure care)	LMER	LMER	LMER
RCRA Subtitle C Tank Release Report (24 hours/30 days)	LMER	LMER	LMER
Certification of Major Tank Repairs (7 days after repair)	LMER	LMER LMER	
Hazardous Waste Transportation Spill Report (as occurs)	LMER	LMER	LMER
Hazardous Waste Fuel Activities Notification (if applicable)	LMER	LMER	LMER
TDEC Recycled Waste Storage Notification	LMER	LMER	LMER
Miscellaneous Reports Required by Special Permits			
- Reports required from LMER	LMER	LMER	LMER
- Reports required from DOE	LMER	DOE	DOE
- Reports required from LMER & DOE	LMER	LMER & DOE	DOE
Responses to Regulators Requests for Information			
- Response required from LMER	LMER	LMER	LMER
- Response required from DOE	LMER	DOE	DOE
- Response required from LMER & DOE	LMER	LMER & DOE	DOE
Miscellaneous Administrative Order Deliverables That May be Established			
- Issued to LMER	LMER	LMER	LMER
- Issued to DOE	LMER	DOE	DOE
- Issued to LMER & DOE	LMER	LMER & DOE	DOE
Permit Condition - Response to Request for Information			
- Required from LMER	LMER	LMER	LMER
- Required from DOE	LMER	DOE	DOE
- Required from LMER & DOE	LMER	LMER & DOE	DOE

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
Report of SWMU Release Noncompliance with Permit Conditions (24 hours/15 days)	LMER	LMER*	LMER
RCRA Hazardous Waste Spill Report	LMER	LMER*	LMER
RCRA Delisting Petitions	LMER	LMER & DOE	DOE
Land Disposal Restrictions			
- Case by Case Extensions	LMER	LMER & DOE	DOE
- No Migration Petition	LMER	LMER & DOE	DOE
- Treatment Variances	LMER	LMER & DOE	DOE
- LDR/BDAT Certifications	LMER	LMER	LMER
- One-time notifications (including annual updates)	LMER	LMER	LMER
- Waste Analysis Plans for accumulation tanks, containers, and containment buildings	LMER	LMER	LMER
Notification of Intent to Perform Treatability Studies	LMER	LMER & DOE	DOE
Treatability Studies Records and Annual Report	LMER	LMER	LMER
Subpart AA Semiannual “Equipment” Emissions Report (if necessary)	LMER	LMER	LMER
Subpart BB Semiannual “Equipment” Emissions Report (if necessary)	LMER	LMER	LMER
Subpart CC Semiannual “Equipment” Emissions Report (if necessary)	LMER	LMER	LMER
Notification for Alternative Air Emission Monitoring Methods at RCRA Units	LMER	LMER	LMER

*DOE ER Division must be provided copies of these documents.

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
Tennessee Solid Waste Regulations			
- Annual Report for Sanitary Landfill	LMER	LMER	LMER
- Monthly Report for Asbestos and Beryllium Disposal	LMER	LMER	LMER
- Annual Groundwater Monitoring Report for Sanitary Landfill Operation	LMER	LMER	LMER
Sanitary Landfill License Renewal Applications	LMER	LMER & DOE	DOE
Sanitary and Inert Landfill Permit Applications	LMER	LMER & DOE	DOE
Landfill Siting Requests for Geological Evaluation	LMER	LMER	LMER
Response to Solid Waste Landfill NOVs, NODs			
- Issued to LMER	LMER	LMER	LMER
- Issued to DOE	LMER	DOE	DOE
- issued to LMER & DOE	LMER	LMER & DOE	DOE
Solid Waste Transporters Fee (annual)	LMER	LMER	LMER
Waste Analysis Plan (30-day notice)	LMER	LMER	LMER

UNDERGROUND STORAGE TANK DOCUMENTS

UST Notification/Certification Forms for New Tanks	LMER	LMER	LMER
UST Amended Notification Form for Change in Status	LMER	LMER	LMER
UST Registration Fee	LMER	LMER	LMER
UST Extension Request for Deliverable Documents	SAME AS FOR DOCUMENT		
UST Initial Abatement Report (20 days after release confirmation)	LMER	LMER	LMER

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
UST Initial Site Characterization Report (45 days after release confirmation)	LMER	LMER	LMER
UST Free Product Removal Report (45 days after discovery of free product)	LMER	LMER	LMER
UST Environmental Assessment Report (120 days after receiving release response letter from TN UST Division)	LMER	LMER	LMER
UST Site Ranking Form (120 days after receiving release response letter from TN UST Division)	LMER	LMER	LMER
UST Site-Specific Standard Request	LMER	LMER	LMER
UST Corrective Action Plan (150 days after receiving release response letter from TN UST Division)	LMER	LMER & DOE	DOE
UST Site Monitoring Report (frequency dependent on purpose of monitoring)	LMER	LMER	LMER
UST Application for Permanent Closure (30 days before closure)	LMER	LMER	LMER
UST Permanent Closure Report (Within 45 days of closure sample collection)	LMER	LMER	LMER
UST Application to Treat Petroleum Contaminated Soil	LMER	DOE	DOE
UST Report of Sampling Stockpiled Soils	LMER	LMER	LMER
UST Report to Determine Applicable Soil Cleanup Levels	LMER	LMER	LMER
UST Application for Authorization of Class V Underground Injection Well for UST Sites	LMER	LMER & DOE	DOE

APPENDIX E

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS



APPENDIX E
BASELINE OF
REQUIRED COMPLIANCE DOCUMENTS
DOE DIRECTIVES

DOE Directives can be found at the following Internet address:

<http://www.explorer.doe.gov:1776/htmls/directives.html>

REQUIRED COMPLIANCE	THROUGH CHANGE	TITLE	DATE	NOTE
DOE O 137.1		Plan for Operating in the Event of a Lapse in Appropriations	9-4-98	
DOE M 140.1-1A		Interface with the Defense Nuclear Facilities Safety Board	1-26-99	
DOE O 200.1		Information Management Program	9-30-96	
DOE M 200.1-1 Except Chapter 7		Telecommunications Security Manual	3-97	
DOE N 205.1		Unclassified Cyber Security Program Compliance: Implementation date to be decided.	7-26-99	
DOE O 224.1		Contractor Performance Based Business Management Process	12-8-97	
DOE O 241.1		Scientific and Technical Information Management	8-17-98	
DOE O 251.1A		Directives System	1-30-98	
DOE M 251.1-1A		Directives System Manual	1-30-98	
DOE O 311.1A		Equal Employment Opportunity and Diversity Program	12-30-96	
DOE O 350.1	1 5-8-98	Contractor Human Resource Management Program	9-30-96	
DOE N 350.5		Use of Facility Contractor Employees for Services to DOE in the Washington, D.C. Area	4-15-99	
DOE O 412.1		Work Authorization System	4-20-99	
DOE O 413.1		Management Control Program Compliance: Implementation is in accordance with DOE (Cumesty) letter dated 7-8-97, and LMER (Rhude) letter dated 9-26-97.	12-6-95	
DOE O 413.2		Laboratory Directed Research and Development	3-5-97	
DOE O 430.1A		Life Cycle Asset Management Compliance: Implementation is in accordance with an implementation plan approved by DOE on 9-9-99.	10-14-98	

APPENDIX E
BASELINE OF
REQUIRED COMPLIANCE DOCUMENTS
DOE DIRECTIVES

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<http://www.explorer.doe.gov:1776/htmls/directives.html>

REQUIRED COMPLIANCE	THROUGH CHANGE	TITLE	DATE	NOTE
DOE O 430.2		In-House Energy Management Compliance: Implementation is in accordance with an implementation plan approved by DOE on 7-28-97.	6-13-96	
DOE M 450.3-1		The DOE Closure Process for Necessary and Sufficient Sets of Standards	1-25-96	
DOE O 470.1	1 6-21-96	Safeguards and Security Program	9-28-95	
DOE O 470.2		Safeguards and Security Independent Oversight Program	12-23-98	
DOE O 471.1		Identification and Protection of Unclassified Controlled Nuclear Information	9-25-95	
DOE O 471.2A		Information Security Program Compliance: Implementation is in accordance with an implementation plan approved by DOE on 10-8-97.	3-27-97	
DOE M 471.2-1B		Classified Matter Protection and Control Manual	1-6-99	
DOE O 472.1B		Personnel Security Activities	3-24-97	
DOE M 472.1-1		Personnel Security Program Manual	5-22-98	
DOE M 473.2-1	1 8-21-97	Firearms Qualification Courses Manual	7-8-97	
DOE M 475.1-1		Identifying Classified Information	5-8-98	
DOE O 481.1		Work for Others (Non-Department of Energy Funded Work)	9-30-96	
DOE M 481.1-1		Reimbursable Work for Non-Federal Sponsors Process Manual	9-30-96	
DOE O 534.1		Accounting	9-29-95	
DOE 1240.2B	1 9-3-92	Unclassified Visits & Assignments by Foreign Nationals	8-21-92	
DOE 1270.2B		Safeguards Agreement with the International Atomic Energy Agency (IAEA)	6-23-92	1
DOE 1300.3		Policy on the Protection of Human Subjects	8-23-90	
DOE 1340.1B		Management of Public Communications and Scientific, Technical, and Engineering Publications	1-7-93	

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DOE DIRECTIVES

DOE Directives can be found at the following Internet address:

<http://www.explorer.doe.gov:1776/htmls/directives.html>

REQUIRED COMPLIANCE	THROUGH CHANGE	TITLE	DATE	NOTE
DOE 1350.1	1 3-26-84	Audio Visual and Exhibits Management	10-28-81	
DOE 1450.4		Consensual Listening-in To or Recording Telephone-Radio Conversations	11-12-92	
DOE 1500.3	7 7-6-94	Foreign Travel Authorization Compliance: Implementation is in accordance with DOE letter for Martha Krebs, Director, Office of Energy Research, dated 5-24-94.	11-10-86	
DOE 2030.4B		Reporting Fraud, Waste, and Abuse	5-18-92	
DOE 2100.8A		Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities	1-27-93	
DOE 2110.1A	2 5-18-92	Pricing of Departmental Materials and Services. Compliance: Change 2 of the Order failed to incorporate interim guidance, "Policy on Waiver of DOE's Added Factor and Depreciation." Subsequent clarification from ORO confirmed the need to continue following this interim guidance. Compliance: Implementation will be in accordance with DOE-ORO letter from J. R. Martin, Director, Finance Division, dated 8-3-94, regarding the application of the departmental added factor (DAF) based on the source of funds. Effective 8-3-94, the DAF rate will be applied to any work performed for a non-Federal entity (as opposed to full cost factor and depreciation normally applied to private work) if the work is financed from another Federal entity. Written documentation should be provided from the non-Federal entity or the other Federal agency. This change in policy applies only to new work. Compliance: Implementation will be in accordance with DOE memorandum from Elizabeth E. Smedley, Controller, dated 8-25-94, regarding the wavier of the added factor and depreciation for small businesses and nonprofit organizations participating in funds-in agreement, effective 10-1-94. This waiver is valid for one year, through 9-30-95.	7-14-88	
DOE 2300.1B		Audit Resolution and Follow-up	6-8-92	

APPENDIX E
BASELINE OF
REQUIRED COMPLIANCE DOCUMENTS
DOE DIRECTIVES

DOE Directives can be found at the following Internet address:

<http://www.explorer.doe.gov:1776/htmls/directives.html>

REQUIRED COMPLIANCE	THROUGH CHANGE	TITLE	DATE	NOTE
DOE 2320.1C		Cooperation with the Office of Inspector General	5-18-92	
DOE 2320.2B		Establishment of Department Position on Inspector General Reports	5-18-92	1
DOE 2321.1B		Auditing of Programs and Operations	5-14-92	1
DOE 2340.1C		Coordination of General Accounting Office Activities	6-8-92	1
DOE 5480.29		Employee Concerns Management System	1-15-93	
DOE 5560.1A		Priorities and Allocations Program	5-8-85	
DOE 5632.1C		Protection and Control of Safeguards and Security Interests	7-15-94	
DOE M 5632.1C		Manual for Protection and Control of Safeguards and Security Interests	7-15-94	DOE M 5632.1C-1, Chapter XI, canceled by DOE O 470.1. DOE M 5632.1C-1, Chapter III, paragraphs 1, 2, and 4 thru 9, canceled by DOE O 471.2
DOE 5632.7A		Protective Force Program	4-13-94	
DOE 5633.3B		Control and Accountability of Nuclear Materials Compliance: Implementation plan is in accordance with an implementation plan accepted by DOE on 7-28-95.	9-7-94	
DOE M 5639.6A-1		Manual of Requirements for the Classified Automated Information Systems Security Program Compliance: Implementation is in accordance with an implementation plan approved by DOE on 11-15-95.	7-15-94	
DOE 5639.8A		Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities	7-23-93	
DOE 5660.1B		Management of Nuclear Materials.	5-26-94	
DOE 5670.1A		Management and Control of Foreign Intelligence Compliance: Implementation is in accordance with MMES letter No. AE92-044 dated 06-10-92.	1-15-92	

APPENDIX E
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DOE Directives can be found at the following Internet address:

<http://www.explorer.doe.gov:1776/htmls/directives.html>

REQUIRED COMPLIANCE	THROUGH CHANGE	TITLE	DATE	NOTE
SEN-34-91	1	Implementation of the Chief Financial Officers Act of 1990	8-15-91	
NOTICE 1240.2		Unclassified Foreign National (DOE) Visits and Assignments This Notice expires on 11-29-94 unless otherwise directed.	11-29-93	
NOTICE 1240.3		Extension of DOE N 1240.2. This Notice expires on 5-29-95 unless otherwise directed.	11-29-94	

APPENDIX E
BASELINE OF
REQUIRED COMPLIANCE DOCUMENTS
ORO DIRECTIVES

ORO Directives can be found at the following Internet address:
http://www.ornl.gov/doe_oro_dmg/orchk1st.htm

REQUIRED COMPLIANCE	THROUGH CHANGE	TITLE	DATE	NOTE
ORO O 130 Chapter II	1 5-15-98	BUDGET Shutdown of Department Operations upon Failure of Congress to Enact Appropriations	5-15-96	
ORO O 140 Chapter II	1 5-15-98	EXTERNAL RELATIONSHIPS Safeguards Agreement with the International Atomic Energy Agency (IAEA)	5-15-96	
ORO O 220 Chapter I	1 7-28-98	ASSESSMENTS Reporting Fraud, Waste, and Abuse to the Office of Inspector General	5-31-96	
Chapter II	1 1-7-99	Cooperation with the Office of Inspector General	9-30-96	
Chapter III	1 7-28-98	Establishment of Department Position on Inspector General Reports	5-31-96	
Chapter IV	1 7-28-98	Coordination of General Accounting Office Activities	5-31-96	
Chapter VII	1 7-28-98	Audit Resolution and Follow-Up	5-31-96	
Chapter IX		Auditing of Programs and Operations	9-30-96	
ORO O 250 Chapter I		STANDARDS MANAGEMENT Oak Ridge Operations Standards Management Program Overview	3-27-98	2
Chapter II	1 6-3-98	Oak Ridge Directives Standards System	3-27-98	
Chapter III		Oak Ridge Operations Technical Standards Program	3-27-98	2
Chapter IV		Contractor Directives Appendix	3-27-98	
Chapter V		Development, Approval, and Maintenance of Smart Standards	3-27-98	
Chapter VI		Implementation and Corrective Action Plans	3-27-98	
Chapter VII		Maintenance of Standards/Requirements Identification Documents	3-27-98	

APPENDIX E
BASELINE OF
REQUIRED COMPLIANCE DOCUMENTS
ORO DIRECTIVES

ORO Directives can be found at the following Internet address:
http://www.ornl.gov/doe_oro_dmg/orchklst.htm

REQUIRED COMPLIANCE	THROUGH CHANGE	TITLE	DATE	NOTE
ORO O 350 Chapter III	1 4-29-99	CONTRACTOR HUMAN RESOURCE PROGRAMS Federal Labor Standards	5-31-96	
Chapter VI	1 9-30-98	Workplace Substance Abuse Programs at Oak Ridge Sites	6-28-96	
ORO O 410 Chapter I	1 12-1-98	MANAGEMENT Work Authorization System	9-24-96	
Chapter II	1 9-21-98	Management of Nuclear Materials	5-31-96	
ORO O 430 Chapter I	5 7-7-99	LIFE CYCLE FACILITY OPERATIONS Life Cycle Asset Management (LCAM)	9-30-96	
Chapter II		In-House Energy Management	6-14-96	
ORO O 450 Chapter III	1 4-9-99	PROTECTION OF THE PUBLIC AND ENVIRONMENT Cultural Resources Management Program	9-30-96	
ORO O 470 Chapter I	1 4-16-99	SAFEGUARDS AND SECURITY Safeguards and Security Program	9-30-96	
Chapter V		Identification of Classified Information	9-30-96	
Chapter VII	1 7-23-98	Protection and Control of Safeguards and Security Interests	5-15-96	
Chapter VIII	1 9-28-98	Protective Force Program	5-15-96	
Chapter IX	1 5-10-99	Control and Accountability of Nuclear Materials	5-15-96	
Chapter XI	1 4-23-99	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities	9-30-96	
Chapter XII	1 7-22-98	Counterintelligence (CI) Program	5-15-96	

APPENDIX E
BASELINE OF
REQUIRED COMPLIANCE DOCUMENTS
ORO DIRECTIVES

ORO Directives can be found at the following Internet address:
http://www.ornl.gov/doe_oro_dmg/orchk1st.htm

REQUIRED COMPLIANCE	THROUGH CHANGE	TITLE	DATE	NOTE
ORO N 471.2	2 4-15-99	TECHNICAL SURVEILLANCE COUNTERMEASURES (TSCM) PROGRAM Technical Surveillance Countermeasures (TSCM) Program - Use of Telephone Lineman-type Handsets or Items Similar in Purpose, Use, or Effect on DOE-owned or Leased Property	3-5-96	
ORO O 560 Chapter I	1 8-27-98	TELECOMMUNICATIONS AND DATA SYSTEMS Unclassified Computer Security Program	5-15-96	
ORIG 4300.2B		Non-DOE Funded Work Compliance: Implementation will be in accordance with MMES letter dated 3-5-93.	12-23-92	

* Notes

(1) This document is not directly applicable to the Contractor; it is included in the list of applicable documents because the Contractor must provide certain information or input to DOE in order for DOE to comply with requirements specified in the document.

(2) This document is not directly applicable to the Contractor; however, it is included in this list of applicable documents because an associated document in the same series is applicable (e.g., because a DOE order is applicable, the OR order or ORIG is made applicable) or because the policies listed in the order are part of the Contractor's good business practices.

APPENDIX E

REQUIRED COMPLIANCE DOCUMENTS

OTHER APPLICABLE DIRECTIVES

Work Smart Standards (WSS) and Standards/Requirements Identification Documents (S/RIDs)

can be found at the following Internet address:

<http://x10capserv.ornl.gov/htmldocs/x-10/ons/onscawss.htm>

REQUIRED COMPLIANCE	THROUGH CHANGE	TITLE	DATE	NOTE
WSS	1 & 2 8-2-99	Other Industrial, Radiological, and Non-Radiological Hazard Facilities	7-25-96	
WSS	1 6-23-99	Radiochemical Research Facilities, Bldgs 2026 and 5505	9-30-96	
WSS		The Five Accelerator Facilities	9-30-96	
WSS	1 6-23-99	Radiochemical Technology Facilities, Bldgs 3027 and 3047	12-17-96	
WSS	1 6-23-99	Radiochemical Engineering Development Center, Bldgs 7920, 7930, and Support Areas	12-17-96	
WSS	1 6-23-99	Radiochemical Development Facility, Bldg 3019 and its Ancillary Bldgs	5-7-97	
WSS	1 6-23-99	Irradiated Materials Examination and Testing Facility and Irradiated Fuels Examination Laboratory, Bldgs 3025E, 3525, and Support Areas	5-7-97	
WSS		Construction and Construction-Like Activities	5-7-97	
WSS		Hazardous Waste Operations Facilities, Bldgs 0964, 7507, 7507W, 7651, 7652, 7653, 7654, 7659, 7667, 7668, 7810A, 7823, and 7830A	9-3-97	
WSS		Waste Management and Remedial Action Division Radiological and Industrial Facilities	12-5-97	
		Waste Management and Remedial Action Division Nuclear Category 2 and 3 Facilities	12-5-97	
WSS		Engineering Design for Standard Industrial, Radiological, Non-Reactor Category 2 and 3 Nuclear and Accelerator Facilities	4-14-98	
WSS	1 6-23-99	HFIR	9-10-98	
WSS		Nuclear Hot Cell Facility, Bldg. 4501	7-1-99	
S/RID	1	Occurrence Reporting	11-20-97	
S/RID		Emergency Management	11-5-96	

APPENDIX F (RESERVED)

Contract No. DE-AC05-96OR22464

APPENDIX G
ANNUAL COST ESTIMATE



Appendix G
FY 98 Annual Cost Estimate

<u>Program</u>	<u>Estimate</u>
Energy Efficiency & Renewable Energy	\$ 81,649,000
Defense Programs	15,878,000
Nuclear Energy	4,397,000
Production (Isotopes)	12,500,000
Energy Research	
Fusion	17,500,000
Physical Sciences	107,623,000
Envir/Research & Development	22,500,000
Computational & Tech R&D	<u>21,786,000</u>
Total Energy Research	\$ 169,409,000
Fossil Energy	8,672,000
Environment, Safety & Health	10,100,000
Other Services	
DOE	15,704,000
WFO	<u>31,700,000</u>
Total Other Services	\$ 47,404,000
Work for Others (OFA)	67,000,000
Environmental Management R&D	21,655,000
Capital/Construction	
Capital Equipment	22,122,000
Construction	14,819,000
Total DOE/WFO/Other DOE (LRP)	\$ 475,605,000

Contract No. DE-AC05-96OR22464

APPENDIX H (RESERVED)

APPENDIX I

First Half FY 2000 LMER Critical Outcomes Plan

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Appendix I
First Half FY 2000 LMER Critical Outcomes Plan

1.0 Science and Technology

Lockheed Martin Energy Research Corporation (LMER) will provide high-quality research and develop leading edge, enabling technologies that are critical to DOE's mission and the nation.

2.0 Leadership

LMER will provide leadership that ensures excellence, relevance, and stewardship in all aspects of the conduct of assigned programs.

3.0 Environment, Safety and Health Integration

LMER will integrate ES&H into research, operations, and management practices such that work is performed in a manner that fully protects the environment and the safety and health of the workforce and the public.

4.0 Infrastructure

LMER will maintain the infrastructure to support operations in a safe, environmentally responsible, and cost-effective manner.

5.0 Business Operations

LMER will use efficient and effective corporate management systems and approaches to guide decision-making, streamline and improve operations, align resources and reduce costs, and improve the delivery of products and services.

6.0 Stakeholder Relations

Be a good neighbor. LMER will work with the customer, stakeholders, and neighbors in an open, frank, and constructive manner.

APPENDIX J
KEY PERSONNEL



Appendix J
Key Personnel

- * President, LMER and Director, ORNL
- * Executive Vice President, LMER and Deputy Director, ORNL, Operations and Administration
- ** Executive Vice President, LMER and Deputy Director, ORNL, Science and Technology
- ** Vice Presidents, LMER and Associate Directors, ORNL

- Advanced Materials, Physical, & Neutron Sciences
- Computing, Robotics, & Education
- Energy & Engineering Sciences
- Life Sciences & Environmental Technologies
- Operations, Environment, Safety, and Health

Vice President, Partnerships and Program Development
Vice President and General Counsel
Chief Financial Officer
SNS Project Executive Director

* Personnel changes for the President and Executive Vice President of LMER require prior DOE approval. All other positions listed require coordination with DOE prior to personnel changes.

** As optimum organizational structure is defined in LMER/ORNL, functions may change and additional Vice Presidents with responsibilities as either Associate Directors or Office Directors will be added to the key personnel list.

Contract No. DE-AC05-96OR22464

APPENDIX K (RESERVED)

AGREEMENT REGARDING CONTRACTOR STATUS AS
CO-OPERATOR FOR AIR EMISSION AND WATER POLLUTION PERMITS