



DEPARTMENT OF ENERGY
NAVEL REACTORS LABORATORY FIELD OFFICE
POST OFFICE BOX 109
WEST MIFFLIN, PENNSYLVANIA 15122-0109

NRLFO:CON:18-141
12 July 2018

Mr. Tom D'Agostino, President
Fluor Marine Propulsion, LLC
2300 Clarendon Boulevard, Suite 1110
Arlington, VA 22201

Dear Mr. D'Agostino:

SUBJECT: AWARD OF CONTRACT 89233018CNR000004 FOR THE MANAGEMENT AND OPERATION OF THE NAVAL NUCLEAR LABORATORY

The U. S. Department of Energy's Naval Reactors Laboratory Field Office (NRLFO), is pleased to advise you that it has selected the offer submitted by Fluor Marine Propulsion, LLC (FMP) in response to Solicitation No. DE-SOL-0011530 for the management and operation of the Naval Nuclear Laboratory (NNL). Enclosed is an executed copy of Standard Form 33, *Solicitation, Offer and Award*, which is effective upon receipt.

FMP will begin the Transition Period today, and is expected to be prepared to assume full responsibility for the subject contract on 1 October 2018.

In accordance with the requirements in Section C and elsewhere in the above referenced contract, FMP is required to implement the Transition Period, which includes the offering of employment to all current NNL personnel and the preparation for assumption of all NNL subcontracts. NRLFO has obligated the maximum allowed amount of \$250,000 for the payment of allowable, allocable and reasonable transition period costs which can be accessed following the instructions contained in Section G-5 of the contract.

NRLFO has already directed the current contractor to begin the procurement process for setting up the special financial institution account that will establish the letter of credit for the Base Period of the contract. Once the process is completed, the Special Financial Institution Agreement will become part of the above referenced contract.

In addition to the actions needed to assure a smooth and orderly transition the following actions, although not all inclusive, are also requested:

1. In accordance with Section K-2.3 of the Request for Proposal, submit evidence that your company possesses, or has commenced the process to obtain a facility security clearance. Your company must possess a facility security clearance prior to expiration of the transition period.

2. Complete and submit to the Contracting Officer the *Federal Bureau of Investigation (FBI), Criminal Justice Information Services, Security Addendum* dated 6/2017 that is referenced in Section H-24, *FBI Criminal Justice Information Services, Security Addendum*.
3. In accordance with Section H-38 of the contract, submit an Organizational Conflict of Interest Plan. While FMP contractually has 45 days to submit the Organizational Conflict of Interest Plan, NRLFO is requesting this be expedited to the Government by 3 August 2018 in order for the Naval Reactors Program to understand and resolve any concerns associated with other work that Fluor supports.

The DOE utilizes a Strategic Integrated Procurement Enterprise System (STRIPES) by which this contract and any subsequent modifications will be issued. The Government would like to hold a conference call on 13 July 2018 at 9:00 am EST. A formal kickoff meeting date will be jointly established during the 13 July conference call.

Congratulations on your selection for this important work with the Department of Energy, Naval Reactors Program. We look forward to working with you. Please feel free to contact me at Juliana.Heynes@nrp.doe.gov or 412-476-7241 with any questions or concerns.

Sincerely,



J.-L. Heynes, Director
Contracts Division

Enclosure

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING DX	PAGE OF PAGES 1 225	
2. CONTRACT NUMBER 89233018CNR000004		3. SOLICITATION NUMBER DE-SOL-0011530	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED 02/14/2018	6. REQUISITION/PURCHASE NUMBER 18NR000304
7. ISSUED BY NRLFO - Pgh U.S. Department of Energy Naval Reactors Laboratory Field Office - Pgh P. O. Box 109 West Mifflin PA 15122-0109		CODE 01111	8. ADDRESS OFFER TO (If other than Item 7)		

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in _____ until _____ (Hour) local time _____ (Date)

CAUTION: LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME Marie T. Z. Pastor	B. TELEPHONE (NO COLLECT CALLS)			C. E-MAIL ADDRESS Marie.Pastor@nrl.navy.mil
		AREA CODE 518	NUMBER 395-6375	EXT.	

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
<input checked="" type="checkbox"/>	A	SOLICITATION/CONTRACT FORM	2	<input checked="" type="checkbox"/>	I	CONTRACT CLAUSES	69
<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICES/COSTS	1	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
<input checked="" type="checkbox"/>	C	DESCRIPTION/SPECS./WORK STATEMENT	4	<input checked="" type="checkbox"/>	J	LIST OF ATTACHMENTS	1
<input checked="" type="checkbox"/>	D	PACKAGING AND MARKING	0	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
<input checked="" type="checkbox"/>	E	INSPECTION AND ACCEPTANCE	1	<input type="checkbox"/>	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
<input checked="" type="checkbox"/>	F	DELIVERIES OR PERFORMANCE	1	<input type="checkbox"/>	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
<input checked="" type="checkbox"/>	G	CONTRACT ADMINISTRATION DATA	2	<input type="checkbox"/>	M	EVALUATION FACTORS FOR AWARD	
<input checked="" type="checkbox"/>	H	SPECIAL CONTRACT REQUIREMENTS	37				

OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232.8)	10 CALENDAR DAYS (%) NET 30	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
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14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR Fluor Marine Propulsion, LLC Attn: David Palmer 2300 Clarendon Boulevard Suite 1110 Arlington VA 22201	CODE 081071051	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
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15B. TELEPHONE NUMBER AREA CODE NUMBER EXT.	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/>	17. SIGNATURE	18. OFFER DATE
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AWARD (To be completed by government)

0001 through 0003 AS TO ITEMS NUMBERED	19. ACCEPTED	20. AMOUNT \$17,000,250,000.00	21. ACCOUNTING AND APPROPRIATION DOE PRIME CONTRACT
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22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) () <input type="checkbox"/> 41 U.S.C. 253 (c) ()	23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) ITEM G-5
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24. ADMINISTERED BY (If other than Item 7) See Schedule G	CODE 01112	25. PAYMENT WILL BE MADE BY See Schedule G	CODE 01111
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26. NAME OF CONTRACTING OFFICER (Type or print) Matthew J. Brott	27. UNITED STATES OF AMERICA Signature on File (Signature of Contracting Officer)	28. AWARD DATE 07/12/2018
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CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
89233018CNR000004

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NAME OF OFFEROR OR CONTRACTOR
Fluor Marine Propulsion, LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	DUNS Number: 081071051 Contract award is made in response to Fluor Marine Propulsion, LLC proposal, which was received on 03/05/2018 in response to solicitation DE-SOL-0011530 dated 01/02/2018 (as revised by amendment 0001 dated 02/14/2018). The STRIPES system generates a separate Standard Form 33 at time of award and does not modify the solicitation requirements. Delivery Location Code: 01111 NRLFO - Pgh U.S. Department of Energy Naval Reactors Laboratory Field Office - Pgh P. O. Box 109 West Mifflin PA 15122-0109 US Payment: NRLFO - Pgh U.S. Department of Energy Naval Reactors Laboratory Field Office - Pgh P. O. Box 109 West Mifflin PA 15122-0109 Fund: 01700 Appr Year: 2018 Allottee: 62 Report Entity: 440101 Object Class: 25400 Program: 2222754 Project: 0000000 WFO: 0000000 Local Use: 0000000 FOB: Destination Period of Performance: 07/12/2018 to 09/30/2023				
00001	Transition Period for Management and Operation of the Naval Nuclear Laboratory (NNL) Obligated Amount: \$250,000.00				250,000.00
00002	Management and Operation of the Naval Nuclear Laboratory (NNL), Base Term Line item value is: \$8,500,000,000.00				8,500,000,000.00
00003	OPTION: Management and Operation of the NNL for an additional five year period. Amount: \$8,500,000,000.00 (Option Line Item)				8,500,000,000.00

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING DX	PAGE OF PAGES 1 225	
2. CONTRACT NUMBER 89233018CNR000004		3. SOLICITATION NUMBER DE-SOL-0011530		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED 01/02/2018
7. ISSUED BY NRLFO - Pgh U.S. Department of Energy Naval Reactors Laboratory Field Office - Pgh P. O. Box 109 West Mifflin PA 15122-0109		CODE 01111	8. ADDRESS OFFER TO (If other than Item 7) See Section L of the Joint Solicitation			

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and 1 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in _____ until 1400 ES local time 03/05/2018
(Hour) (Date)

CAUTION: LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE (NO COLLECT CALLS)			C. E-MAIL ADDRESS
		AREA CODE	NUMBER	EXT.	

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<input checked="" type="checkbox"/>	D	PACKAGING AND MARKING	1	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
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<input checked="" type="checkbox"/>	F	DELIVERIES OR PERFORMANCE	1	<input type="checkbox"/>	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
<input checked="" type="checkbox"/>	G	CONTRACT ADMINISTRATION DATA	2	<input type="checkbox"/>	M	EVALUATION FACTORS FOR AWARD	
<input checked="" type="checkbox"/>	H	SPECIAL CONTRACT REQUIREMENTS	37				

OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 365 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232.8)

<input type="checkbox"/>	10 CALENDAR DAYS (%)	<input type="checkbox"/>	20 CALENDAR DAYS (%)	<input type="checkbox"/>	30 CALENDAR DAYS (%)	<input type="checkbox"/>	CALENDAR DAYS (%)
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14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):

AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
0001	2/14/2018		

15A. NAME AND ADDRESS OF OFFEROR Fluor Marine Propulsion, LLC 2300 Clarendon Boulevard Suite 1110 Arlington, VA 22201	CODE 081071051	FACILITY 81QQ2	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) Tom D'Agostino President, Fluor Government Group
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15B. TELEPHONE NUMBER AREA CODE 703	NUMBER 351-6466	EXT.	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/>	17. SIGNATURE 	18. OFFER DATE 3/5/2018
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AWARD (To be completed by government)

19. ACCEPTED AS TO ITEMS NUMBERED 00001 through 00003	20. AMOUNT \$17,000,250,000.00	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) () <input type="checkbox"/> 41 U.S.C. 253 (c) ()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) See Section G-5	ITEM
24. ADMINISTERED BY (If other than Item 7) See Section G		25. PAYMENT WILL BE MADE BY See Section G	CODE
26. NAME OF CONTRACTING OFFICER (Type or print) M. J. Brott, Manager, Naval Reactors Laboratory Field Office		27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	28. AWARD DATE 7/12/2018

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

AUTHORIZED FOR LOCAL REPRODUCTION

Previous edition is unusable

STANDARD FORM 33 (Rev. 9-97)

Prescribed by GSA - FAR (48 CFR) 53.214(c)

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
89233018CNR000004

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NAME OF OFFEROR OR CONTRACTOR
Fluor Marine Propulsion, LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	DUNS Number: 081071051 Delivery Location Code: 01111 NRLFO - Pgh U.S. Department of Energy Naval Reactors Laboratory Field Office - Pgh P. O. Box 109 West Mifflin PA 15122-0109 US Payment: FOB: Destination Period of Performance: 07/12/2018 to 09/30/2028				
00001	Transition Period for Management and Operation of the Naval Nuclear Laboratory (NNL) Obligated Amount: \$0.00				\$250,000.00
00002	Management and Operation of the Naval Nuclear Laboratory (NNL), Base Term, Obligated Amount: \$0.00				\$8,500,000,000.00
00003	OPTION: Management and Operation of the NNL for an additional five year period. Amount: \$0.00 (Option Line Item)				\$8,500,000,000.00

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SECTION E: INSPECTION AND ACCEPTANCE

SECTION F: DELIVERIES OR PERFORMANCE

SECTION G: CONTRACT ADMINISTRATION DATA

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SECTION I: CONTRACT CLAUSES

SECTION J: LIST OF ATTACHMENTS

Key Personnel

Special Financial Institution Account Agreement (Sample)

Baseline List of Applicable Directives

Commitment Letter

Performance Guarantee Agreement

Guidance for Preparation of Diversity Plan

Appendix A, Human Resources

FBI Criminal Justice Information Services Security Addendum

Management Plan

Diversity Plan (TBD)

Master Small Business Subcontracting Plan (DOE) FY 2019

Transition Plan

Part I – The Schedule

SECTION B: SUPPLIES OR SERVICES AND PRICES/COSTS

1. SERVICES BEING ACQUIRED

In accordance with the Terms and Conditions of this Contract, the Contractor shall be responsible for planning, managing and executing the work described in Section C. In this regard, the Contractor shall provide the personnel, equipment, materials, supplies and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incidental to, the efficient, effective and safe management and operation of the Naval Nuclear Laboratory (NNL).

The Contract will consist of three (3) CLINs as follows:

CLIN 00001 TRANSITION PERIOD FOR MANAGEMENT AND OPERATION OF THE NAVAL NUCLEAR LABORATORY (NNL)

The Transition Period will be approximately three (3) months, from 07/01/2018 (or time of award, whichever is later) through 09/30/2018, with an estimated cost of \$250,000.00.

CLIN 00002 BASE PERIOD

The Base Period, or Initial Operating Phase, will be a five (5) year period of performance, from 10/01/2018 through 09/30/2023, with an estimated cost of \$8,500,000,000.00.

CLIN 00003 OPTION PERIOD

The Option Period, in accordance with the clause located in Part II, Section I, FAR 52.217-9 *Option to Extend the Term of the Contract* will be a five (5) year period of performance, from 10/01/2023 through 09/30/2028, with an estimated cost of \$8,500,000,000.00.

2. INFORMATION CONCERNING FEE

a. Fee

A “fee discount factor” of 50 % will apply to the fee for each Contract year including options. The fixed fee will be incorporated annually. It will consist of the fee calculated in accordance with Section H-21 titled “Determination of Annual Fixed-Fee” and the proposed fee discount factor.

b. Fixed-Fee

The fixed-fee payable to the Contractor for the performance of the work under this Contract is as follows:

\$TBD for the first (1st) year of the Base Term of the Contract

There will 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 costs for performance of that work.

NOTE: The annual fixed-fee as provided above will be incorporated by a modification to the Contract each year the Contract is active.

All TBDs will be inserted by the DOE at time of award.

Part I – The Schedule

SECTION C: DESCRIPTION/SPECIFICATIONS

Statement of Work

- (a) **Introduction.** This contract is for the consolidated management and operation of the Naval Nuclear Laboratory (NNL), with facilities in New York, Pennsylvania, and Idaho (See Section H herein). The Contractor is responsible for performing work involving naval nuclear propulsion as directed by Naval Reactors under the authority of the Atomic Energy Act of 1954, as amended, and 50 U.S.C. §§ 2406, 2511. The Contractor shall manage and perform work and services, and manage, operate and maintain the sites both as described in this contract and as designated in writing by the Department of Energy (DOE), including the utilization of information, material, funds, and other property of the DOE, the collection of revenues, and the acquisition, sale or other disposal of property for the DOE, subject to the limitations as hereinafter set forth. The Contractor shall manage and perform work and services at the sites, or at other locations, as appropriately identified by the DOE, and manage, operate, and maintain facilities in accordance with the terms and conditions of this contract. In the absence of applicable directions and instructions from the Government, the Contractor will use its best judgment, skill, and care in all matters pertaining to the performance of this contract.
- (b) **Performance Requirements.** The Government will identify contract performance objectives for each of the functional areas listed below at the initiation of the contract and throughout the period of performance.

Reactor Physics Support and Development

Safeguards and Security

Reactor Plant Systems Engineering

Reactor Plant Engineering and Design

Prototype Operations and Training

Reactor Servicing (to include Spent Fuel Handling)

Infrastructure, Logistics, and Administrative Services

Reactor Engineering

Fluid Systems Design and Plant Engineering

Control Equipment, Systems and Plant Analysis

Valve Engineering

Radiological Control, Chemistry Technologies, Environmental, Safety and Health

Materials Verification and Development

Steam Generator and Primary Components

Regulatory Affairs

Information Technology Management

Reactor Safety Analysis

The Contractor shall prepare a seven year detailed work plan for each of the functional areas identified above and submit it to the Government for review and approval. Work plans will include detailed work scopes, schedules, cost estimates, etc. necessary to ensure objective accomplishment. Work plans shall be updated annually.

Contractor performance shall be assessed in accordance with the Government's quality assurance plan. The Contractor will receive periodic performance assessments based on the Contractor's results in meeting the Government's objectives.

The assessment of the Contractor's performance will be used to determine the Contractor's future scope of work and budget allocations. Performance assessments will also be used to support a determination as to whether or not to exercise the option contained in this contract for an extension of the period of performance.

- (c) **Administration**. Unless the Government otherwise notifies the Contractor in writing, its responsibilities under this contract shall be administered by the Manager, Naval Reactors Laboratory Field Office, and his/her authorized representatives.
- (d) **Program Requirements**. The work and services and the management of infrastructure at the sites as designated hereunder shall be conducted in accordance with programs designated in writing by the Government and the DOE directions and instructions referred to in paragraph (a) above. The work and services to be performed include, but are not necessarily limited to, the following:
- (1) Design, development, and testing of high-power, long life reactor plants for naval submarines and surface vessels. This will include development work directed toward the improvement of reactor plant components and the resolution of design problems. This work shall include the follow-on efforts for the manufacture of reactor core and reactor plant components, as well as engineering services and technical assistance in the construction and operation of reactor plants.
 - (2) Maintenance, operation and modification at the Naval Reactors Facility (Idaho) and reactor and propulsion plant prototypes and associated infrastructure at the Kenneth A. Kesselring Site (New York). The purpose of the Naval Reactors Facility is to receive, disassemble, examine, test and store or dispose of expended naval reactor cores and associated core components and to determine data on the core conditions as well as to assemble, disassemble, inspect, ship and store irradiation test specimens. The purpose of the prototypes and associated infrastructure at the Kenneth A. Kesselring Site is to test reactor and propulsion plant components and to train propulsion plant operators.
 - (3) Reactor design and evaluation studies of new and improved methods of applying nuclear power to the propulsion of naval vessels. This will include the study, design and development of advanced core concepts directed toward providing reliable and economic long-lived reactor cores.
 - (4) Technical assistance in connection with the procurement of reactor plant components and reactor cores and fuel under other Government contracts. The Government will advise the Contractor of the award of such contracts.
 - (5) Maintenance and operation of the various test facilities at the sites. Modification, improvement, alteration or repair of existing test facilities or construction of new test facilities, as deemed necessary by the Contractor and Government.
- (e) **Procurement**. The Contractor shall be responsible for the acquisition planning, cost estimating, procurement and management for the Government of such materials, supplies, equipment, services, and facilities and other infrastructure, as are required in connection with the work under this contract, as Contractor acquired Government property. In addition, the Contractor shall procure equipment and reactor plant components, including the servicing thereof. It is recognized that the Contracting Officer approves manuals, policies, procedures, and forms covering procurement (including subcontracting and purchasing)

under this contract, which may be revised periodically. Such approved issuances establish policies for procurement activities under this contract.

(f) Related Services.

- (1) In addition to the services specifically described in other paragraphs of this Section, and subject to the written approval of the Contracting Officer, the Contractor shall perform under this contract - either for the DOE or its contractors - other services, incidental or related to the services described in this provision or to the DOE programs, when the work involved has been determined by the Government to be within the special scientific and technical capabilities of the Contractor.
- (2) The Contractor, to the extent it is in a position to do so, will render services, related to the mission of the contract, utilizing the laboratory facilities, to Federal agencies and to other cost-type contractors of the DOE as requested in writing by the Contracting Officer in accordance with such procedures and requirements as the DOE may establish.

With the written approval of the Contracting Officer, the Contractor will render the same services, including transfers of property, to other DOE contractors under the terms and conditions herein stated, and the payments received therefore shall be for the account of the Government and shall be handled as a part of the advances of Government funds associated with items (1) and (2) above.

(g) General.

- (1) The Contractor shall perform the work necessary for the efficient operation (i.e. maintenance and repair) and decommissioning (i.e., decontamination and disposal) of the facilities, giving reasonable consideration to an aging infrastructure at the various sites. The Government may request that corporate resources and expertise be applied to improve outcomes across the NNL, in the areas of facilities and infrastructure sustainment and recapitalization efforts, major projects and initiatives, or human capital management. Projects under applicable procedures adopted by the DOE may require Government direction and therefore shall not be undertaken until such direction has been issued.
- (2) Whenever approval or other action by the Government is required with respect to any expenditure or commitment by the Contractor under the terms of this contract, and the Contractor knowingly fails to obtain or avoids the required approval or action, the Government shall not be responsible until such approval or action is obtained.
- (3) The Contractor shall be responsible for the employment and training of all professional, technical, skilled, and unskilled Contractor personnel performing work under this contract.
- (4) Persons employed by the Contractor or its subcontractors or consultants shall not be deemed employees of the Government.
- (5) The Contractor shall implement a Life Cycle Systems Management framework to provide effective, affordable and supportable systems/equipment from early design through disposal. Life Cycle Systems Management is an integrated acquisition, engineering and sustainment approach to ensure systems/equipment are concurrently developed or acquired with the optimal logistics support in place (for new items) or to validate/improve the current logistics support (for existing items).
- (6) The Contractor shall procure and manage for the Government such materials, supplies, equipment, and facilities and other infrastructure, as are required in connection with the work under this contract as are not furnished by the Government.
- (7) The Contractor is responsible for administration of all subcontracts, purchase orders and other contractual agreements made by the Contractor, including responsibility for payment from the

Government funds advanced and agreed to be advanced hereunder to the Contractor. This responsibility shall exist for the period of performance, unless and/or until transferred (in whole or in part) to the Government or other designee of the DOE.

- (8) The Contractor shall, when directed by the DOE, and may but only when authorized by the DOE, enter into subcontracts for the performance of any portion of the work under this contract.
- (h) **Transition Period.** The Contractor shall implement the Transition Plan (submitted with its proposal) for the Transition Period. The Contractor shall:
- (1) Make offers to and transition incumbent employees;
 - (2) Complete all of the specific milestones and accomplishments identified in the Transition Plan that are to be achieved during the Transition Period; and
 - (3) Execute, after obtaining Contracting Officer approval, any necessary agreements for transfer, novation, or assignment of subcontracts and agreements to the Contractor.
- (i) **Occupational Safety and Health and Radiological Controls Programs.** The Contractor will implement and maintain Occupational Safety and Health Programs and Radiological Controls Programs as directed and prescribed by Naval Reactors (NR) under the authority of the Atomic Energy Act of 1954, as amended, and 50 U.S.C. §§ 2406, 2511. The Contractor's senior leader at each site is directly responsible for the safe performance of work and the safeguarding of radioactive sources, radioactive byproduct, and source materials in a manner that ensures protection of workers, the public and the environment. Through this contract, the Contractor is granted authority to handle radioactive material and equipment associated with the Naval Nuclear Propulsion Program (NNPP).
- (j) **Nuclear Reactor Plant Operations.** The Contractor is authorized to operate NNPP reactors as directed and prescribed by NR under the authority of the Atomic Energy Act of 1954, as amended, and 50 U.S.C. §§ 2406, 2511.
- (k) **Nuclear Facility Operations.** The Contractor is authorized to operate NR Program nuclear facilities as directed and prescribed by NR under the authority of the Atomic Energy Act of 1954, as amended, and 50 U.S.C. §§ 2406, 2511.
- (l) **Conditions of Nuclear Operations.** In the event that the Government identifies that the Contractor fails to comply with applicable standards and requirements pertaining to the operations discussed in paragraphs (j) and (k) above, 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 nuclear reactor plant or facility operations. Thereafter, a start order for resumption of the nuclear reactor plant or facility operations may only 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.

Part I – The Schedule

SECTION D: PACKAGING AND MARKING

Reserved.

SECTION E: INSPECTION AND ACCEPTANCE

The following Federal Acquisition Regulation (FAR) Clauses [48 Code of Federal Regulations (CFR) Chapter 1] are incorporated by reference.

FAR 52.246-5 Inspection of Services - Cost-Reimbursement (APR 1984)

FAR 52.246-9 Inspection of Research and Development (Short Form) (APR 1984)

Part I – The Schedule

SECTION F: DELIVERIES OR PERFORMANCE

1. PERIOD OF PERFORMANCE

The period of performance of this Contract shall expire five years after completion of the Transition Period, unless sooner reduced, terminated or extended in accordance with this Contract. The period of performance may be extended for up to an additional five (5) years of performance. The Contract's maximum period of performance, including the Option Period, if exercised, shall not exceed ten (10) years (excluding the Transition Period). This Contract consists of:

- a. Transition Period: The Transition Period will be approximately three (3) months, from the date of award (on or about 07/01/2018) through 09/30/2018. During the Transition Period, the Contractor shall perform the activities and provide the documents identified elsewhere in the contract and as approved by the Contracting Officer. The Contractor's responsibility for management and operation of the NNL shall commence with the Base Period.
- b. Base Period: The Base Period, or Initial Operating Phase, will be a five (5) year period of performance, from 10/01/2018 through 09/30/2023.
- c. Option Period: The Option Period will be a five (5) year period of performance, from 10/01/2023 through 09/30/2028.

2. PRINCIPAL PLACES OF PERFORMANCE

The principal places of performance for the Contract are in or near: Pittsburgh, Pennsylvania; Schenectady, New York; West Milton, New York; and, Idaho Falls, Idaho.

3. EVALUATION OF PERFORMANCE AND EXERCISE OF OPTION

The decision to extend this Contract via the exercise of the option will be a unilateral decision made by the DOE. Exercise of the option shall be in accordance with FAR Clause 52.217—9, *Option to Extend the Term of the Contract*. At a minimum, the DOE will consider the following in determining whether to extend the Contract:

- a. The Contractor's overall technical, administrative, and cost performance, taking into consideration performance evaluations pursuant to the Contractor Performance Assessment Reporting System (CPARS).
- b. The considerations under DEAR 970.1706-1(b) for exercising options under M&O contracts.

Part I – The Schedule

SECTION G: CONTRACT ADMINISTRATION DATA

1. GOVERNMENT CONTACTS

a. Contract Administration and Correspondence Matters

The Contract will be administered by the DOE.

Correspondence involving contractual matters shall be addressed to the Contracting Officer (CO), who is also primarily responsible for all contractual actions required to be taken by the DOE under the terms of this Contract. The CO may be contacted at:

U.S. Department of Energy
Naval Reactors Laboratory Field Office
Contracts Division
Post Office Box 109
West Mifflin, PA 15122-0109

b. Marking

To promote timely and effective administration, correspondence submitted under this Contract shall contain a subject line commencing with the Contract number, as follows:

SUBJECT: Contract Number 89233018CNR000004; (insert topic of correspondence after Contract Number)

2. MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this Contract, the Contracting Officers designated in Section H-8, *Changes*, shall be the only individuals authorized, on behalf of the Government, to:

- a. Accept nonconforming work;
- b. Waive any requirement of this Contract; or
- c. Modify any term or condition of this Contract.

3. CONTRACTOR CONTACT

The Contractor shall identify to the Contracting Officer the point of contact who has the authority and is responsible for managing, administering, and negotiating changes to the terms and conditions of this Contract as well as executing contract modifications on behalf of the Contractor.

Name: Tom D'Agostino
Position: President, Fluor Government Group
Company: Fluor Corporation
Address: 2300 Clarendon Boulevard, Suite 1100 Arlington, VA 22201
Phone: 703.351.6466
Fax: 703.469.1593
E-mail: Tom.D'Agostino@fluor.com

4. RECOGNITION OF PERFORMING ENTITY

- a. The Contractor and the DOE recognize that the parties named below form the performing entity on which the award of this Contract was based.

The performing entity is Fluor Marine Propulsion LLC.

- b. Accordingly, the Contractor and the DOE agree that the Contractor shall take no action to replace any of the components of the entity named above without the prior written approval of the Contracting Officer.

5. INVOICING FOR TRANSITION COSTS

- a. The Contractor shall submit vouchers electronically through the Oak Ridge Financial Service Center's Vendor Inquiry Payment Electronic Reporting System (VIPERS) for reimbursement for work performed under CLIN 00001, Transition Period. VIPERS allows vendors to check the payment status of any voucher submitted to the DOE. To obtain access to and use VIPERS, please visit the web page at <https://vipers.doe.gov/>. The Contractor shall contact the Contracting Officer if the Contractor is unable to submit invoices electronically to resolve any issue(s).

- b. The Contractor shall invoice for work performed in accordance with Section H- 58, *Transition Period*, of this contract and as directed by the Contracting Officer following the procedures identified above. All work completed during the Transition Period shall be billed within 60 days after the end of Transition Period.

Part I – The Schedule**SECTION H: SPECIAL CONTRACT REQUIREMENTS**

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1. **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR CO-OPERATION ON THE USES OF ATOMIC ENERGY FOR MUTUAL DEFENCE PURPOSES**

The Contractor and/or its subcontractors at any tier may be called upon by the United States Government to participate in exchanges within the scope of the Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for Co-operation on the Uses of Atomic Energy for Mutual Defence Purposes (“Agreement”). In the event of such participation, the Contractor and/or its subcontractor(s) shall be covered by the terms of the Agreement.

2. **ALTERNATIVE DISPUTE RESOLUTION (DOE-H-2033, OCT 2014)**

- (a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of contractual issues in controversy by mutual agreement are essential to the successful and timely completion of contract requirements. Accordingly, the DOE and the Contractor shall use their best efforts to informally resolve any contractual issue in controversy by mutual agreement. Issues of controversy may include a dispute, claim, question, or other disagreement. The parties agree to negotiate with each other in good faith, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties.
- (b) If a mutual agreement cannot be reached through negotiations within a reasonable period of time, the parties may use a process of Alternate Dispute Resolution (ADR) in accordance with the clause at FAR 52.233-1, *Disputes*. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision, but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible in evidence in any subsequent litigation proceedings.
- (c) Either party may request that the ADR process be used. The Contractor shall make a written request to the Contracting Officer, and the Contracting Officer shall make a written request to the appropriate official of the Contractor. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process, and officials of both parties who have the authority to resolve the issue must participate in the agreed upon process.
- (d) ADR procedures may be used at any time that the Contracting Officer has the authority to resolve the issue in controversy. If a claim has been submitted by the Contractor, ADR procedures may be applied to all or a portion of the claim. If ADR procedures are used subsequent to issuance of a Contracting Officer’s final decision under the clause at FAR 52.233-1, *Disputes*, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the Contracting Officer’s final decision and does not constitute reconsideration of the final decision.
- (e) If the Contracting Officer rejects the Contractor’s request for ADR proceedings, the Contracting Officer shall provide the Contractor with a written explanation of the specific reasons the ADR process is not appropriate for the resolution of the dispute. If the Contractor rejects the Contracting Officer’s request to use ADR procedures, the Contractor shall provide the Contracting Officer with the reasons for rejecting the request.

3. **ANNUAL REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR – ALT. II (DOE-H-2051, OCT 2014 MODIFIED)**

- (a) Pursuant to FAR 52.204-8, *Annual Representations and Certifications*, the Contractor’s representations and certifications submitted electronically via the System for Award Management (SAM) website dated 2/12/2018 are hereby incorporated into the contract by reference.

- (b) The Contractor, by signing this contract, certifies that it has verified that its SAM submission incorporated by reference into this contract pursuant to paragraph (a) above is current, accurate, complete, and applicable to this contract.
- (c) The following additional Contractor Representations, Certifications and Other Statements are hereby incorporated into the contract by reference: *Proposal submitted on 3/5/2018 in response to Department of Energy DE-SOL-0011530.*

4. APPLICATION OF DEAR 970.5215-3, CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES-FACILITY MANAGEMENT CONTRACTS

Subparagraph (a) (2) of Section 3173 of the National Defense Authorization Act of 2003 (Public Law 107-314, codified at 42 U.S.C. §2282c) exempts facilities and activities of the Naval Nuclear Propulsion Program (NNPP), within the meaning of Executive Order 12344, dated February 1, 1982 (codified at 50 U.S.C. §§ 2406, 2511), from the regulations issued by Department of Energy pertaining to worker health and safety under paragraph (a) (1) of Section 3173. The term *Integrated Safety Management System* or *ISMS* is not used by the NNPP and as such is inapplicable to this contract wherever such term may appear. Therefore, for purposes of application, DEAR 970.5215-3 shall be understood and construed not to include "performance under an approved *Integrated Safety Management System (ISMS)*."

5. APPLICATION OF DEAR 970.5223-1, INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION

For the purposes of DEAR 970.5223-1,

- (a) Environment, Safety and Health (ESH) includes Occupational Safety and Health (OSH), Occupational Medicine, and applicable environmental and regulated waste laws and regulations.
- (b) All paragraphs of the DEAR 970.5223-1 are applicable to Radiological Controls with the exception of paragraphs (c) through (e).
- (c) The Contractor will implement an Occupational Safety and Health Program (OSH Program) and Radiological Controls Program as directed and prescribed by Naval Reactors under the authority of the Atomic Energy Act of 1954, as amended, and 50 U.S.C. §§ 2406, 2511.
- (d) ESH and Radiological Controls compliance oversight organizations are to oversee line management compliance with Naval Reactors requirements and applicable regulations for ESH and Radiological Controls to ensure protection of the workforce, the public, and the environment.
- (e) Risk reduction will implement controls that emphasize the principle of eliminating hazards where feasible and appropriate commensurate with the risk involved, or through application of engineering controls preferentially over administrative controls or use of personal protective equipment.

6. ASSIGNMENT AND TRANSFER OF CONTRACTS AND SUBCONTRACTS (DOE-H-2043, OCT 2014) (MODIFIED)

- (a) *Assignment of DOE Prime Contracts.* During the period of performance of this contract, it may become necessary for the DOE to transfer and assign existing or future DOE prime contracts supporting site work to this contract. The Contractor shall accept the transfers and assignments of such contracts. Any recommendations and/or suggestions regarding individual transfers directed by the DOE shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.
- (b) *Transfer of Subcontracts.* As the successor Contractor, the Contractor agrees to accept the transfer of existing subcontracts and other agreements including the *Special Financial Institution Account Agreement* as determined necessary by the DOE for continuity of operations. The Contractor shall use its best efforts to negotiate changes to the assigned subcontracts incorporating mandatory flow-down

provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the Contracting Officer in writing. The DOE reserves the right to direct the Contractor to transfer to the DOE or another Contractor any subcontract awarded under this contract. The Contractor accepts responsibility to complete existing subcontracted work.

7. BUDGET APPROVALS AND MANPOWER

Pursuant to DEAR 970.5232-4, *Obligation of Funds*, the Contractor agrees to comply with specific limitations set forth in NR financial plans and other directives including, but not limited to, budget approvals (e.g., Naval Reactors Technical/Budget plans, capital purchases, education and training, travel and overtime), laboratory personnel ceilings, manpower allocations and economic parameters.

Within six months after commencement of operations, the Contractor shall submit to the Contracting Officer for approval, a proposal for establishing the policies, practices and procedures for a labor cost ceiling. The intent is to include all labor costs in the ceiling including wages, salaries, benefits and deferred compensation for all employees. This change should be implemented no later than 10/1/2019.

8. CHANGES

Each of the following Government representatives has been delegated Contracting Officer authority and is authorized to make changes to this contract in accordance with DEAR 970.5243-1, *Changes*:

M. J. Brott
J. L. Heynes
N. J. Anderson
T. M. Weis
M. Z. Pastor

No changes to this contract will be recognized by the Government unless made by a Government representative designated by name in this contract and substantiated by a formal written change order. Changes made by the Contractor, unless so authorized by a written change order, shall be made at the sole risk of the Contractor with no financial recourse against the Government. The designated Government representatives for authorizing changes to this contract are those listed above. Limitations, changes or additions to the listing of designated Government representatives may be made by the Government by written notice to the Contractor.

9. COMMUNICATIONS WITH GOVERNMENT AGENCIES

The Contractor agrees to accept Naval Reactors (NR)/Naval Reactors Laboratory Field Office (NRLFO) as the single point of contact with state or local and all Federal Government agencies or offices in all matters within the scope of this contract, except as otherwise approved by the Government in writing.

10. COMMUNITY SERVICE ACTIVITIES

The Contractor will be reimbursed for reasonable costs incidental to employee participation in community service activities (e.g. campaigns to solicit for charitable contributions like United Way, periodic blood bank drives). Official time used to support community service activities shall be reasonable to avoid excessive lost time.

11. CONFERENCE MANAGEMENT (DOE-H-2068 MODIFIED) (OCT 2015)

The Contractor agrees that:

- (a) The Contractor shall ensure that contractor-sponsored conferences reflect the DOE/National Nuclear Security Administration's (NNSA) commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of the NNPP as well as other sponsors of work. In addition, the Contractor will ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.

- (b) For the purposes of this Clause, “conference” is defined in Attachment 2 of the DOE Deputy Secretary’s Memorandum dated August 17, 2015 entitled, “Updated Guidance on Conference-Related Activities and Spending.” A copy of the DOE Policy Flash and Memorandum can be found at <http://energy.gov/management/downloads/policy-flash-2015-36-al-2015-09>.
- (c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:
 - (1) The Contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:
 - i. Covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
 - ii. Purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).
 - (2) The Contractor authorizes use of its official seal, or other seals/logos/trademarks to promote a conference. Exceptions include non-M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).
- (d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.
- (e) The Contractor will provide information on conferences they plan to sponsor with expected costs exceeding \$100,000 in the Department’s Conference Management Tool, including:
 - (1) Conference title, description, and date
 - (2) Location and venue
 - (3) Description of any unusual expenses (e.g., promotional items)
 - (4) Description of contracting procedures used (e.g., competition for space/support)
 - (5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees)
 - (6) Number of attendees
- (f) The Contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed \$100,000 until notified of approval by the Contracting Officer.
- (g) For DOE sponsored conferences, the Contractor will not expend funds on the proposed conference until notified by the Contracting Officer.
 - (1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/ trademarks to promote a conference. Exceptions include instances where DOE:
 - i. Covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference); or
 - ii. Purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.

- (2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.
- (3) The Contractor will provide cost and attendance information on their participation in all DOE sponsored conference in the DOE Conference Management Tool.
- (h) For non-contractor sponsored conferences, the Contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:
 - (1) Track all conference expenses.
 - (2) Require the General Manager or Chief Operating Officer approve a single conference with net costs to the Contractor of \$100,000 or greater.
- (i) Contractors are not required to enter information on non-sponsored conferences in DOE'S Conference Management Tool.
- (j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than \$10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If a contractor does so, its expenditures for the conference may be deemed unallowable.

12. CONSECUTIVE NUMBERING (DOE-H-2013, OCT 2014)

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

13. CONSULTANT AGREEMENTS

The Contractor agrees to minimize the use of consultant services and resultant agreements under the contract and shall award such subcontracts or agreements in accordance with NR Program policy or any related guidance in the event a consultant agreement is needed in an exceptional case.

14. CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (DOE-H-2014, OCT 2014) (MODIFIED)

- (a) The Contractor shall accept, in its own name, Notices of Violation(s) or Alleged Violations (NOVs/NOAVs) issued by federal or state regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to other provisions of this contract.
- (b) After providing NR/NRLFO advance written notice, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fine and penalties. However, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without first obtaining written approval from the Contracting Officer. Failure to obtain advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.
- (c) The Contractor shall notify NR/NRLFO promptly when it receives notice from regulator(s) of NOVs, NOAVs, and/or fines and penalties.

15. CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (DOE-H-2034, OCT 2014)

The Government may award contracts to other contractors for work to be performed at a DOE owned or controlled site or facility. The Contractor shall cooperate fully with all other on-site DOE contractors and Government employees. The Contractor shall coordinate its own work with such other work as may be directed by the Contracting Officer or a duly authorized representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by a Government employee.

16. CONTRACTOR INTERNAL COMMUNICATIONS

Various Contractor internal communications shall be provided to Contractor personnel to keep them informed regarding employee-related accomplishments, rights, responsibilities, benefits, and Contractor activities. Where practical, a single communication vehicle will be developed and distributed to reach all Contractor employees. Communication vehicles may include paper, electronic, and web-based postings of information. Reasonable costs for the publication and distribution of such vehicles are allowable, including the user of color for photographs provided there is no additional cost to the Government. All multi-colored printing shall contribute demonstrable value toward achieving a greater fulfillment of the ultimate end-purpose of the printed item in which it is included. Also, the cost of providing parent company publications to the Contractor sites shall be justified for allowability. Development and control of communications of this type is the responsibility of Human Resources, including adherence to applicable requirements for release of information, such as Public Utterance, Technical Information Review and Approval Request, and ensuring information in these publications intended for employees is not published in external publications without specific Government approval.

17. CONTRACTOR'S ACKNOWLEDGMENT OF CONTRACT

By acknowledgment of this contract, the Contractor agrees that the scope of work required is understood by the Contractor; that there are no informal commitments by the Government or the Contractor that in any way affect the work under this contract; that there are no open or unresolved issues related to this contract except as explicitly stated herein; and that the Contractor therefore understands and agrees that this contract states the complete agreement of the parties.

18. CORPORATE GENERAL AND ADMINISTRATIVE EXPENSE

Consistent with DEAR 970.3102-3-70, corporate general and administrative expenses will not be allowable under this contract. Items of cost charged by the Contractor's Headquarters Organizational Units on a direct charge basis shall require Head of the Contracting Activity approval if the cost proposed to be charged per single item exceeds \$50,000.

19. COST RECOVERY

If, at any time during the performance of the contract, the Contracting Officer disallows a cost(s) in accordance with FAR Subpart 42.8, *Disallowance of Costs*, the Contractor must repay the amount owed within 15 days of the Contracting Officer's written determination disallowing the cost(s). If the Contractor fails to repay the disallowed amount within the allotted time, the Contracting Officer may offset fee payments to recover the amount owed.

20. DEFINITION OF THE TERM NAVAL NUCLEAR LABORATORY

The term "Naval Nuclear Laboratory" or any abbreviation of same, as used in this contract, includes the sites known as the Bettis Atomic Power Laboratory located in West Mifflin, Pennsylvania, the Knolls Atomic Power Laboratory located in Niskayuna, New York, the Naval Reactors Facility located in Idaho Falls, Idaho, and the Kenneth A. Kesselring Site in West Milton, New York. It may also include other offsite activities operated to perform work under this contract.

21. DETERMINATION OF ANNUAL FIXED-FEE

A fixed-fee for each contract year throughout the term of this contract, including options if exercised, (excluding any Transition Period) shall be determined at the beginning of each such contract year or as soon thereafter as practicable.

The fixed-fee for a given contract year shall be determined as follows:

- (a) One fee base for the contract year operations shall be established in accordance with DEAR 970.1504-1-7, *Fee Base*. In the event the parties fail to agree on the amount of the fee base, the Contracting Officer may make a unilateral decision, subject to appeal under FAR 52.233-1, Alt. I, *Disputes*.
- (b) A maximum fixed-fee shall then be calculated by applying the fee base established under paragraph (a) above to the *Research and Development Efforts* fee schedule, which is set forth in DEAR 970.1504-1-6, *Calculating Fixed Fee*.
- (c) The maximum fixed-fee calculated under paragraph (b) shall be multiplied by the “Fee Discount Factor” percentage set forth in Section B. The product of this calculation shall be the fixed-fee amount for the given contract year.

The fixed-fee, as determined above, shall be incorporated into the contract through an annual modification.

22. DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT (DOE-H-2019, OCT 2014)

The following provisions shall apply in the event the Contractor does not complete contract performance for any reason:

- (a) The Government may take possession of and use all the technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this contract, including the right to use the data in any Government solicitations for the completion of the work contemplated under this contract. Technical data includes, but is not limited to, specifications, designs, drawings, operational manuals, flowcharts, software, databases and any other information necessary for the completion of the work under this contract. Limited rights data and restricted computer software will be protected in accordance with DEAR 970.5227-1, *Rights in Data- Facilities*. The Contractor shall ensure that its subcontractors and licensors make similar rights available to the Government and its contractors.
- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this Contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and licenses in any third party intellectual property to the Government, or such other third party as the Government may designate, that are necessary for the completion of the work contemplated under this Contract.

23. EMPLOYEE RELATIONS

The Contractor is expected to maintain a positive employee relations environment that will foster high productivity at a reasonable cost. The Contractor shall implement and sustain effective employee concerns resolution programs consistent with relevant DOE and Program Directives.

24. FBI CRIMINAL JUSTICE INFORMATION SERVICES, SECURITY ADDENDUM

Federal Bureau of Investigation (FBI), Criminal Justice Information Services, Security Addendum dated 6/2017, defining the duties, responsibilities, and protective measures for contractor access to FBI information resources, required by Title 28, Code of Federal Regulations Part 20, is attached at Part III, *List of Documents, Exhibits, and Other Attachments*, Section J.

25. FOOD SERVICE

The Contractor ensures the availability of cafeteria and vending machine services on the DOE premises, in compliance with applicable laws, regulations and directives. The Contractor shall make reasonable efforts to minimize the cost impact to the Contract of such food service activities. Any income recovered from such food service activities by the Contractor shall be credited to the Contract.

The Contractor shall not provide any cafeteria/canteen/vending services for the private benefit of any Contractor employee or Contractor employee association.

26. GENERAL DIRECTION AND CONTROL

In conformance with Part I, *The Schedule*, Section C, *Description/Specification/Statement of Work*, which states in part that the work shall be subject to the general direction and control of the DOE, the Contractor shall comply with such approval and reporting requirements, controls and oversight and operating procedures as the Contracting Officer determines are appropriate to ensure satisfactory performance of the work.

The Contractor acknowledges that NR/NRLFO provides technical and administrative direction and approval for all work to be performed by the Contractor including approval for technical work programs, and certain standards, specifications, systems, procedures and manuals.

In order to enable NR/NRLFO to maintain adequate direction, approval, and oversight, the Contractor agrees to operate in an open and cooperative manner, including providing timely reports, notification and updates of all significant aspects of Contractor work under the contract such as progress or problems in technical programs, significant personnel matters, claims, imminent and actual litigation, and inquiries from the news media and the public. NR/NRLFO will be afforded access to personnel, critiques, audits, etc., as necessary and appropriate to accomplish its oversight function.

27. HUMAN RESOURCE PROGRAMS

(a) Definitions:

- (1) *Commingle Plans*. Cover employees from the Contractor's private operations and its DOE contract work.
- (2) *Current Liability*. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
- (3) *Defined Benefit Pension Plan*. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.

- (4) *Defined Contribution Pension Plan.* Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (5) *Designated Contract.* For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the *Head of the Contracting Activity* determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) *Incumbent Employees.* The employees in good standing of Bechtel Marine Propulsion Corporation (BMPC) under contract DE-NR0000031 as of the last day of the contract Transition Period.
- (7) *Pension Fund.* The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
- (8) *Separate Accounting.* Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.
- (9) *Separate Plan.* Must satisfy Internal Revenue Code (IRC) Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.
- (10) *Spun-off Plan.* A new plan which satisfies IRC Reg. 1.414(l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

(b) Diversity Program (DOE-H-2046, OCT 2014)

- (1) The Contractor shall develop and implement a diversity program consistent with and in support of the DOE's diversity program. A diversity plan covering the full period of performance (base and option periods) shall be submitted to the Contracting Officer for approval within 30 calendar days after the effective date of the contract. Once the diversity plan is approved by the Contracting Officer, the Contractor shall implement the diversity plan within 30 calendar days of its approval by the Contracting Officer.
- (2) The diversity plan shall address, at a minimum, the Contractor's approach to ensure an effective diversity program (including addressing applicable affirmative action and equal employment opportunity regulations) to include: (1) a statement of the Contractor's policies and practices; and (2) planned initiatives and activities which demonstrate a commitment to a diversity program, including recruitment strategies for hiring a diverse work force. The diversity plan shall also address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force; (2) educational outreach, including a mentor-protégé program; (3) stakeholder involvement and outreach; (4) subcontracting; and (5) economic development.
- (3) An annual diversity report shall be submitted pursuant to DEAR 970.5226-1, *Diversity Plan*. This report shall provide a list of accomplishments achieved, both internally and externally during the current reporting period, and projected initiatives during the next reporting period. The report shall also list any proposed changes to the diversity plan which shall be subject to the Contracting Officer's approval.

(c) Policies

Contractor policies regarding paid and unpaid leave, incentive compensation (variable pay), compensation, benefits, workers compensation and self-insurance, special employee activities, outreach, employee programs (e.g., awards and recreation) travel, educational assistance and employee training shall be submitted to the Contracting Officer no later than 60 days after the effective date of the contract.

All the Contractor's personnel policies must be in compliance with the terms and conditions of this contract including but not limited to FAR Part 31, *Contract Cost Principles and Procedures*. If there is a conflict between the Contractor's existing policies and terms of this contract, the contract will govern.

The Contractor shall obtain Contracting Officer prior approval of changes to its existing policies in those areas identified within the scope of this clause and other related provisions of the contract when such changes are expected to change costs to the Government.

(d) Workforce Planning

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 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 the Department of Energy, Department of Navy or Government. Nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

(1) Workforce Planning General

- (a) The Contractor shall annually analyze workforce requirements consistent with current and future Program mission requirements. The Contractor shall describe in a written document how it will ensure it employs a sufficient but not excessive number of employees who possess the appropriate skills to perform the current mission work and the anticipated identified mission work. The assessment shall provide present employment levels in each occupational category. The description of how the Contractor will ensure it employs a sufficient but not excessive number of employees to perform the work in future years shall include a discussion of the following topics: future hiring needs in critical skill areas, recruitment and retention of individuals possessing critical skills, succession planning, and the impact of anticipated retirements/attrition. This analysis shall be provided to the Contracting Officer no later than September 1st of each year.
- (b) The Contractor shall post all internal and external open positions for open competition among all employees.
- (c) The Contractor shall interview at least one qualified woman and one qualified minority candidate for all open executive and management positions. In the event that no minority or female candidate expresses interest in the open position, the General Manager shall provide a letter for information to the Contracting Officer on what specific actions the Contractor engaged in to attract and promote the open position among women and minorities and what forthcoming specific actions will be used in the future to promote these opportunities to women and minority employees.

(2) Reductions in Contractor Employment – Workforce Restructuring

(a) Voluntary Separations

In order to minimize the number of involuntary separations and mitigate the impact on affected employees, in consultation with the Contracting Officer, the Contractor shall consider the use of a Voluntary Separation Program (VSP) before consideration is given to conducting an Involuntary

Separation Program (ISP) when workforce restructuring is necessary. The Contractor shall submit the VSP to the Contracting Officer for approval prior to implementation regardless of the number of employees involved. Prior approval of a VSP by the Contracting Officer is required for such costs to be considered allowable.

(b) Involuntary Reductions in Contractor Employment

- (i) If the restructuring involves between 10-99 employees in a rolling twelve month period, the Contractor shall notify the Contracting Officer no later than 30 days in advance of the action.
- (ii) For restructuring actions that involve separating between 50-99 employees, the Contractor shall prepare a specific workforce restructuring plan and submit the plan to the Contracting Officer for informational purposes. The workforce restructuring plan must include: the rationale for the proposed separations, costs, timelines for notifications, the job classification of the Contractor employees involved, numbers of impacted employees and any other information specified by the Contracting Officer. In addition, the Contractor shall perform an adverse impact analysis and provide a copy of the analysis to the Contracting Officer and Naval Reactors Laboratory Field Office Field Counsel for any restructuring action that involve 50 or more employees within a twelve month period.
- (iii) If the restructuring may involve the separation of 100 or more employees within a twelve month period, the Contractor shall submit a specific workforce restructuring plan for approval by the Contracting Officer at least 90 days before the scheduled restructuring will be announced.
- (iv) Any payments of separation benefits beyond those already approved under the Contract must be approved by the Contracting Officer.
- (v) All notifications to the Contracting Officer regarding Contractor workforce restructuring must contain the rationale for the proposed separations, cost, timelines for notifications, the job classifications of the Contractor employees involved, and the numbers of impacted employees.

(e) **Workforce Transition**

The following are requirements the Contractor shall carry out during the Transition Period prior to the beginning of the Base Period.

(1) Staffing

At the time the Contractor becomes responsible for the work, incumbent employees on the rolls on the last day of the previous contract, will become employees of the Contractor.

(2) Pay & Benefits

Consistent with the requirements identified in Section (g) *Compensation* and Section (h) *Benefits* below, the Contractor shall develop and submit for Contracting Officer approval a pay and benefits program to cover non-bargaining unit incumbent employees. It is expected that the benefits program will be developed using best practices and market-based design concepts to achieve maximum efficiency consistent with or lower than current cost.

- (a) No later than 45 calendar days after the start of the Base Period of performance, the Contractor shall submit for Contracting Officer approval all proposed benefit plans including but not limited to retirement plans, disability, healthcare, paid time off, and service award programs. The submission shall include all plan documents that will describe benefits provided to employees

including existing plans to which the Contractor becomes a sponsor at the beginning of the Base Period (with proposed changes to existing plans) as well as newly proposed plans.

- (b) The submission shall also include an “Employee Benefits Value Study” comparing the proposed benefits for non-bargaining unit incumbent employees who are participants in a Contractor sponsored defined benefit plan and non-bargaining unit incumbent employees who are not eligible to receive benefits under a Contractor sponsored benefit plan. Contracting Officer’s approval of the Contractor’s benefits program will be contingent on the aggregate benefit value not exceeding the comparator group by more than five percent. Or, the Contractor may propose an alternative strategy to realign employee benefits within the five percent threshold, identified above, within a specified period of time. Such proposal must be approved by the Contracting Officer.
- (c) The Contractor shall submit a plan with a timeline for implementing a compensation system that meets the criteria defined in Section (g) *Compensation* Section below by the end of the Transition Period.

(3) Personnel Appendix

The Personnel Appendix sets forth certain Contractor Human Resources Management policies and related expenses that have cost implications under this contract and are not covered explicitly in the FAR or DEAR cost principles. No later than 30 days after the award date of the contract, the Contractor shall submit a plan to address any proposed changes to the Personnel Appendix. The Contractor shall obtain Contracting Officer approval of Personnel Appendix changes before implementation.

(f) Total Rewards Strategy

The Contractor shall submit, for Contracting Officer approval, by the end of the Transition Period, a Total Rewards Strategy demonstrating how the Contractor will comply with the requirements of this Contract. The Total Rewards Strategy will demonstrate how the Contractor’s programs and policies regarding compensation, pensions and other benefits will support at reasonable cost, the effective recruitment and retention of a highly skilled, motivated, and experienced workforce. A description of the Total Rewards Strategy should include the following components:

- (1) Philosophy and strategy for all monetary and non-monetary total rewards programs.
- (2) System for establishing a job worth hierarchy.
- (3) Method for relating internal job worth hierarchy to external market.
- (4) System that links individual and/or group performance to compensation decisions.
- (5) Method for planning and monitoring the expenditure of funds.
- (6) Method for ensuring compliance with applicable laws and regulations.
- (7) System for communicating the programs to employees.
- (8) System for internal controls and self-assessment.
- (9) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rata basis.
- (10) Methodology for ensuring compliance with applicable wage payment laws and regulations (e.g., Fair Labor Standards Act)
- (11) Requirement for an annual total rewards self-assessment with submittal for information to the Contracting Officer by 1 June.

DOE approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Rewards Strategy. The Contractor’s Total Rewards Strategy shall be fully documented, consistently applied, and acceptable to the Contracting Officer. For purposes of complying with the current statutory compensation cap, compensation will determined in accordance with DOE Acquisition Letter 2014-07 or superseding guidance. Costs incurred in implementing the Total Rewards Strategy shall be consistent with the Contractor's documented Total Rewards Strategy as approved by the Contracting Officer.

(g) Compensation

The Contractor shall establish an integrated market based pay and benefits program to recruit, retain and motivate a highly skilled experienced workforce capable of carrying out the technical and other requirements set forth elsewhere in the statement of work.

(1) Cash Compensation

The Contractor shall submit for Contracting Officer approval, within 90 days of the end of the contract Transition Period, a Salary Management Plan that describes the formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6, *Compensation for Personal Services*. The Contractor shall submit any proposed compensation program design changes, prior to implementation, to the Contracting Officer for a determination of cost allowability for reimbursement under the contract.

(2) Annual Compensation Increase Plan (CIP)

- a) In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund. The Contractor will submit the CIP to the Contracting Officer for information and the Contracting Officer has 30 days to review the CIP and may disapprove or extend the period of review in their sole discretion during that 30 day review period, if or when:
 - (i) The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance on the salary increase projected for the CIP year;
 - (ii) The Promotion/Adjustment fund shall be consistent with annual Departmental guidance in total;
 - (iii) The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous Government fiscal year for each salaried group (exempt salaried and non-exempt salaried); and
 - (iv) Salary structure adjustments do not exceed the mean adjustments projected for the CIP year and communicated through the annual Department CIP guidance.

Please note: No later than the first day of the CIP cycle, the Contractor must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories.

- b) If a Contractor does not meet the criteria included in above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability. The CIP should include the following components and data:
 - (i) Comparison of average pay to market (as defined and approved by the CO in the Contractor's Salary Management Plan) average pay.
 - (ii) Information regarding surveys used for comparison
 - (iii) Aging factors used for escalating survey data and supporting information
 - (iv) Projection of escalation in the market and supporting information
 - (v) Information to support proposed structure adjustments, if any

- (vi) Analysis to support special adjustments.
 - (vii) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement.
 - (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous Government fiscal year.
 - (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.
 - (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer.
 - (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
 - (viii) A discussion of the impact of budget and business constraints on the CIP amount.
 - (ix) Comparison of pay to relevant factors other than market average pay.
- (3) The Contracting Officer's approval of individual compensation actions will be required for all employees whose total annual compensation exceeds the levels set in the Personnel Appendix.
- (4) If the Contractor proposes to establish an Incentive Compensation Plan (Variable pay plan/pay-at-risk), documentation shall be provided to the Contracting Officer, for approval no later than 120 days prior to proposed implementation. Such proposal must contain:
- (i) The design of the Incentive Compensation Plan, the funding methodology, and linkage to contract requirements;
 - (ii) Requirement for approval of Incentive Compensation Plan design changes by the Contracting Officer prior to implementation;
 - (iii) Requirement for an annual approval, prior to the performance period, of the total dollar amount of the pool, the eligible positions, and linkage to contract requirements;
 - (iv) Requirement for policy that provides a specific pass-over rate, i.e., percent of participants currently eligible and on the rolls who will not receive an incentive each year;
 - (v) Requirement for an annual summary report on distributions made under an incentive compensation plan; and
 - (vi) For any Executive Incentive Plan, a requirement that any incentive payments are subject to forfeit if the executive fails to meet the terms of the plan.

(5) Excess Compensation

The Government will not reimburse any compensation costs in excess of the current statutory limit. For purposes of the statutory limitations, compensation is defined per Department of Energy Acquisition Letter 2014-07 or superseding guidance. In the event that a Contractor employee's compensation is projected to exceed the current statutory limit, the Contractor will propose a written

plan within 60 days for any needed corrections to the compensation and benefits program to the Contracting Officer for approval. Contractor employee compensation above applicable statutory limitations will be considered unallowable for reimbursement by the Government.

(6) Severance Plans

The Contractor shall submit a severance plan within 60 days of the effective date of the Contract Base Period, which must include the notification period, pay-in-lieu of notice policy, and the severance schedule. Supporting documentation must include information regarding standards from nationally recognized sources and or comparator firms including corporate parents.

Severance pay is not payable to an employee under this contract if the employee:

- (i) Voluntarily separates, resigns or retires from employment,
- (ii) Is offered employment with a successor/replacement contractor,
- (iii) Is offered employment with a parent or affiliated company, or
- (iv) Is discharged for cause.

Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost reimbursement contract.

(h) Benefit Programs

(1) Assumptions of Existing Pension and Benefit Plan and Establishment of New Pension or Benefit Plans

The Contractor will be required to become a sponsor of existing pension plans and other Post Retirement Benefit Plans (PRB), as applicable, with responsibility for management and administration of the plans, including maintaining the qualified status of those plans. Incumbent employees shall remain in their existing pension plans (or comparable successor plans if continuation of existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law. The Contractor shall carry over the length of service credit and leave balances for incumbent employees accrued as of the first day of the Base Period.

To the extent the Contractor seeks to establish new benefit plans or change benefits under existing benefit plans at the end of the contract Transition Period, the Contractor shall provide justification to the Contracting Officer for all new benefit plans and for all changes to existing benefit plans, plan design, or funding methodology. Proposed changes must also include cost impact, and the basis of determining cost. The Contractor must obtain approval from the Contracting Officer prior to implementation of a new benefit plan and prior to making changes to existing benefit plans that increase cost. The Contractor shall provide a 60 day advance notification to the Contracting Officer of administrative changes to benefit plans that do not increase cost or long term liability.

(2) Pension and Other Benefit Programs

No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans that increase costs or are contrary to Departmental policy or written instruction or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans. Changes shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are made for the exclusive purpose of maintaining the plan's qualified status and are not contrary to Departmental policy or written instruction.

Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.

Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (a) and (b) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey Comparison method shall be used in this evaluation to establish an appropriate comparison method. The Contractor shall include major non-statutory benefit plans offered by the Contractor including qualified defined benefit plans and defined contribution retirement, capital accumulation plans and death, disability, health and paid time off welfare benefit programs in both studies. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.

- (a) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the Relative Value (RV) of the benefits programs offered by the Contractor to employees measured against the RV of benefit programs offered by Contracting Officer approved comparator companies. A benefit value study for bargaining unit employees shall be completed six months prior to the end of the collective bargaining agreement if the member benefits differ from other employee groups already evaluated.

If any of the comparator companies no longer participate, the Contractor will recommend replacement companies for approval by the Contracting Officer. To the extent that the value studies do not address post-retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post-retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,

- (b) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.

When the Contractor's total benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived in writing by the Contracting Officer.

When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll, unless waived in writing by the Contracting Officer.

Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range or percent of payroll as approved by the Contracting Officer.

- (c) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing. In addition, a contractor proposal to terminate a pension plan must be provided to the Contracting Officer at least 120 days prior to the scheduled date of plan termination.

- (d) Cost reimbursement for Post-Retirement Benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
 - (e) If the Contractor sponsors a defined benefit pension plan and/or post-retirement benefit plan, it will participate in the plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursement in connection with the plan(s) and participating in a conference call to discuss the Contractor submission [see (4) (f) below for Pension Management Plan (PMP) requirements].
 - (f) The Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.
- (3) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- (a) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
 - (b) Except for Commingled Plans in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which the DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When approved by the Contracting Officer, Commingled Plans shall be converted to Separate Plans at the time of new contract award or the extension of a contract.

(4) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by the DOE pursuant to cost reimbursement contracts for management and operation of the DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution Plans.

- (a) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.
- (b) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA Section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA Section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA Section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA Section 104. While there is no requirement to submit a full scope audit for defined contribution plans, contractors are responsible for maintaining adequate controls for ensuring that defined contribution plan assets are correctly recorded and allocated to plan participants.

- (c) For existing Commingled Plans, the Contractor shall maintain and provide annual separate accounting of assets and liabilities attributable to work performed under this contract as if they were Separate Plans.
 - (d) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to work performed under this contract.
 - (e) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
 - (f) The PMP shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in iBenefits, or its successor system no later than January 31st of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request.
- (5) Reimbursement of Contractor for Contributions to Defined Benefit Pension Plans
- (a) If the Contractor sponsors single employer or multiple employer Defined Benefit pension plans, the DOE will reimburse annual required minimum contributions under the ERISA as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Minimum required contribution amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the PMP process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Contracting Officer to provide preliminary approval, within 30 days after Contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year.
 - (b) If the Contractor sponsors multi-employer Defined Benefit pension plans, the DOE will reimburse pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the Government's fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the PMP process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Contracting Officer to provide preliminary approval, within 30 days after Contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year.

(6) Reporting Requirements for Designated Contracts

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor for each designated pension plan funded by DOE but no later than the dates specified below:

- (a) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing Internal Revenue Service (IRS) Form 5500, *Annual Return/Report of Employee Benefit Plan*;

- (b) IRS Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.
- (c) IRS Forms 5300, *Application for Determination for Employee Benefit Plan*. Copies of all applicable IRS forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(7) Changes to Pension Plans

At least sixty (60) days prior to the adoption of changes to a pension plan, the Contractor shall submit the information required below, to the Contracting Officer. The Contracting Officer must approve plan changes that increase costs as part of a determination as to whether the costs are deemed allowable pursuant to FAR cost principle 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (a) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
 - (i) A copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated by tracked changes;
 - (ii) An analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
 - (iii) Except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel responsible for the plan for purposes of compliance with all legal requirements applicable to private sector Defined Benefit pension plans;
 - (iv) The Summary Plan Description; and
 - (v) Any such additional information as requested by the Contracting Officer.
- (b) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable (see *Benefit Programs*, (h) (1) and (h) (2) above). The justification must:
 - (i) Demonstrate the effect of the plan changes on the Ben-Val or per capita benefit costs;
 - (ii) Provide the dollar estimate of savings or costs; and
 - (iii) Provide the basis of determining the estimated savings or cost.

(8) Terminating Operations

When operations at a designated DOE facility are terminated and no further work is to occur under the contract, the following apply:

- (a) No further benefits for service shall accrue.
- (b) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
- (c) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.

- (d) Assets shall be determined using the “accrual-basis market value” on the date of termination of operations.
- (e) DOE and the Contractor shall establish an effective date for plan termination. On the same day as the Contractor notifies the IRS of plan termination, all plan assets assigned to a terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (f) If the Contractor contemplates spinning off any Plan, the Contractor shall seek guidance from the Contracting Officer.

(9) Terminating Plans

- (a) The Contractor shall not terminate any pension plan (Commingled or Separate) without requesting Contracting Officer approval at least 60 days prior to the scheduled date of plan termination.
- (b) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
- (c) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.
- (d) If ERISA or IRS rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any difference directly to the DOE according to a schedule of payments to be negotiated by the parties.
- (e) The DOE liability to a Commingled Plan shall not exceed that portion which corresponds to the DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (f) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.
- (g) If the Contractor contemplates spinning off any Plan, the Contractor shall seek guidance from the Contracting Officer.

(10) Special Programs

The Contractor must advise DOE and receive prior approval for each early-out program, survivor benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(i) Reports and Information

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

- (a) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure, showing actual against approved amounts; and planned distribution of funds no later than 90 days after the CIP plan year expenditures.
- (b) Per FAR 52.204-10, *Reporting Executive Compensation and First-Tier Subcontract Awards*, a list of the top five most highly compensated executives as defined in FAR cost principle 31.205-6(p)(4)(ii) and their total compensation at the time of Contract award, and at the time of any subsequent change to their total compensation.
- (c) An Annual Compensation and Benefits Report no later than May 1st of each year.
- (d) An annual report on exempt and non-exempt attrition broken down by employee category shall be submitted along with the CIP request. Attrition is defined as voluntary and involuntary terminations, retirements, and deaths.
- (e) Any other reports/information/data requested by the Contracting Officer or designee.
- (f) The detailed results of an annual employee engagement survey.

28. IMPLEMENTATION OF EXECUTIVE ORDER 13693, PLANNING FOR FEDERAL SUSTAINABILITY IN THE NEXT DECADE

This contract involves Contractor operation of Government-owned facilities and/or vehicles and the provisions of Executive Order 13693 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or vehicles. Information on the requirements of the Executive Order may be found at <https://www.gpo.gov/fdsys/pkg/FR-2015-03-25/pdf/2015-07016.pdf>.

29. INCORPORATION OF SMALL BUSINESS SUBCONTRACTING PLAN – ALT I (DOE-H-2050, OCT 2014) (MODIFIED)

- (a) In accordance with FAR 52.219-9, *Small Business Subcontracting Plan*, the Master Subcontracting Plan contained in Part III, *List of Documents, Exhibits, and Other Attachments*, Section J, is hereby incorporated into and made a part of this contract.
- (b) Prior to the beginning of each Government fiscal year, or other period as required by the Contracting Officer, the Contractor shall submit an Individual Subcontracting Plan containing the annual subcontracting goals required by FAR 52.219-9, *Small Business Subcontracting Plan*, and any changes to the Master Subcontracting Plan. The annual, Individual Subcontracting Plan and changes to the Master Plan are subject to the Contracting Officer's approval; and the approved plans are incorporated into the contract.

30. LABOR RELATIONS

- (a) The Contractor shall respect the right of employees to organize, form, join, or assist labor organizations; bargain collectively through employee chosen labor representatives; engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and shall respect the rights of employees to refrain from any or all of these activities.
- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives and strike contingency plans, at least 90 days prior to negotiation of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. Economic parameters also include proposed changes to the current collective bargaining

agreement that will increase costs and/or long term liabilities over and above the current collective bargaining agreement costs.

During the collective bargaining process, the Contractor shall notify the Contracting Officer and obtain Contracting Officer approval before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs or long term liabilities, in excess of the approved economic bargaining parameters, under this Contract or which could involve other items of special interest to the Government.

- (c) The Contractor shall seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR Subpart 22.1, *Basic Labor Policies*, and all applicable Federal and State labor relations laws.
- (d) The Contractor shall notify the Contracting Officer of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practices, work stoppages, picketing, labor arbitrations and settlement agreements; and
- (e) The Contractor shall furnish such additional information as may be required by the Contracting Officer.

31. LOBBYING RESTRICTION

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence or attempt to influence, Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

32. MANAGEMENT AND OPERATING CONTRACTOR SUBCONTRACT REPORTING (DOE-H-7037, NOV 2017)

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

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

“Management and Operating Contractor Subcontract Reporting Capability (MOSRC)” means a DOE system and associated processes to collect key information about Management and Operating Contractor first-tier subcontracts for reporting to the Small Business Administration.

“Transaction” means any contract, order, other agreement or modification thereof (other than one involving an employer-employee relationship) entered into by the Contractor acquiring supplies or services (including construction) required solely for performance of the prime contract.

- (b) *Reporting.* The Contractor shall collect and report data via MOSRC necessary for DOE to meet its agency reporting requirements, as determined by the Small Business Administration, in accordance with the most recent reporting instructions at <https://energy.gov/management/downloads/mosrc-reporting-instructions>. The Contractor shall report first-tier subcontract data in MOSRC. Classified subcontracts shall not be reported. Subcontracts with Controlled Unclassified Information marking shall not be reported if restricted by its category. Contact your Contracting Officer if uncertain of information reporting requirements. The MOSRC reporting requirement does not replace any other reporting requirements (e.g. the Electronic Subcontracting Reporting System or the FFATA Subcontracting Reporting System).

33. MANAGEMENT PLAN

The Management Plan provided in the successful offeror's proposal is hereby incorporated in Part III, List of Documents, Exhibits, and Other Attachments, Section J.

34. NATIONAL ENVIRONMENTAL POLICY ACT (DOE-H-2037, OCT 2014) (MODIFIED)

The work under this contract requires activities to be subject to the National Environmental Policy Act of 1969 (NEPA). The Contractor shall supply to DOE certain environmental information, as requested, in order for DOE to comply with NEPA and its implementing policies and regulations. Funds obligated under this contract shall only be expended by the Contractor on the activities set out in separate correspondence throughout the period of performance, unless the Contracting Officer notifies the Contractor that NEPA requirements have been satisfied and the Contractor is authorized to perform the complete work required under the contract.

35. NO THIRD PARTY BENEFICIARIES (DOE-H-2002, OCT 2014)

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, or conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

36. NUCLEAR FACILITIES OPERATIONS (DOE-H-2038, OCT 2014) (MODIFIED)

- (a) The work under this contract includes the operation of nuclear facilities and land-based naval prototype reactor plants. The Contractor recognizes that such operations involve the risk of a nuclear incident which, while the chances are remote, could adversely affect the public's health and safety and the environment. Therefore, the Contractor shall exercise a degree of care commensurate with the risks involved. The Contractor and the Government shall determine the nature and identity of essential site personnel. The Contractor shall ensure the continued availability of essential personnel for continuity of operations of the NNL regardless of circumstances.
- (b) As used in this clause, the term "nuclear materials" is a collective term which includes source material, special nuclear material, and those other materials to which, by direction of DOE, the provisions of DOE's Orders or Directives regarding the control of nuclear materials, which have been or may be furnished to the Contractor by DOE, apply. The Contractor shall accept existing procedures and, in a manner satisfactory to the Contracting Officer, propose revised, as appropriate, accounting and measurement procedures, maintain current records and institute appropriate control measures for nuclear materials in its possession commensurate with the national security and DOE policy. The Contractor shall make such reports and permits subject to inspection as DOE may require with reference to nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.
- (c) Transfers of nuclear materials shall only be made with the prior written approval of the Contracting Officer, or authorized designee. Nuclear materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this contract. The Contractor shall be responsible for the control of such nuclear materials in accordance with applicable DOE Orders and Directives regarding the control of nuclear materials, which have been or may be issued to the Contractor by the DOE. The Contractor shall make a part of each purchase order, subcontract, and other commitment under this contract involving the use of nuclear materials for which the Contractor has accountability, appropriate terms and conditions for the use of nuclear materials and the responsibilities of the subcontractor or vendor regarding control of nuclear materials. In the case of fixed price purchase orders, subcontracts, or other commitments involving the use of nuclear materials for which the Contractor has accountability, the terms and conditions with respect to nuclear materials shall also identify who has the financial responsibilities, if any, regarding such items as losses, scrap recovery, product recovery, and disposal.

37. ORDER OF PRECEDENCE

Any inconsistencies which require application of the order of precedence specified in FAR 52.215-8, *Order of Precedence*, shall be promptly brought to the attention of the Contracting Officer prior to any action related thereto on the part of the Contractor.

38. ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (DOE-H-2035, OCT 2014)

Within 45 calendar days after the award date of the contract, the Contractor shall submit to the Contracting Officer for approval an Organizational Conflict of Interest (OCI) Management Plan (Plan). The OCI Plan shall describe the Contractor's program to identify, avoid, neutralize, or mitigate potential or actual conflicts of interest that exist or may arise during contract performance and otherwise comply with the requirements of DEAR 952.209-72, *Organizational Conflicts of Interest*. The OCI Plan shall be periodically updated as required during the term of the contract. The Plan shall include, as a minimum, the following:

- (a) The procedures for identifying and evaluating past, present, and anticipated contracts of the Contractor, its related entities and other performing entities under the contract.
- (b) The procedures the Contractor will utilize to avoid, neutralize, or mitigate potential or actual conflicts of interest.
- (c) The procedures for reporting actual or potential conflicts of interest to the Contracting Officer.
- (d) The procedures the Contractor will utilize to oversee, implement, and update the Plan, to include assigning responsibility for management, oversight and compliance to an individual in the Contractor's organization with full authority to implement the OCI Plan.
- (e) The procedures for ensuring all required representations, certifications and factual analyses are submitted to the Contracting Officer for approval in a timely manner.
- (f) The procedures for protecting agency information that could lead to an unfair competitive advantage if disclosed including collecting disclosure agreements covering all individuals, subcontractors, and other entities with access to agency-sensitive information and physical safeguarding of such information.
- (g) An OCI training and awareness program that includes periodic, recurring training and a process to evidence employee participation.
- (h) The enforceable, employee disciplinary actions to be used by the Contractor for violation of OCI requirements.

39. PERFORMANCE GUARANTEE AGREEMENT (DOE-H-2016, OCT 2014)

The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in Part III, *List of Documents, Exhibits, and Other Attachments*, Section J.

If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and severable liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

40. PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL – ALT I (DOE-H 2062, OCT 2014)

- (a) Pursuant to FAR 52.204-9, *Personal Identity Verification of Contractor Personnel*, the Contractor shall comply with applicable DOE regulations, policies and directives regarding identification, credential and access management for its personnel who have routine physical access to DOE-owned or -controlled sites or facilities or routine access to DOE information systems.
- (b) The Contractor shall comply with the requirements of those DOE Directives, or parts thereof, identified elsewhere in the contract pursuant to DEAR 970.5204-2, *Laws, Regulations and DOE Directives*.

41. PERSONNEL (DOE-H-2070) (MODIFIED)

In addition to the requirements of DEAR 952.215-70, *Key Personnel*, the Contractor agrees to continue the practice of recruiting and developing entry level professionals with the intent of filling all key management positions from within the M&O Contractor and Bechtel Plant Machinery, Inc. (BPMI) (or its successor contractor workforce). The Contractor will fill positions on the Key Personnel list from outside the Program only in exceptional cases and with the prior approval of the Contracting Officer. For non-technical key positions the Contractor will notify the Contracting Officer prior to beginning the search process. The Contractor will coordinate with the Contracting Officer prior to any management initiated transfers of personnel away from the NR Program to other Contractor locations.

42. POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PROGRAMS (DOE-H-2004, OCT 2014)

- (a) If this contract expires or terminates and the Contracting Officer has awarded a contract under which the new Contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired Contractor employees with respect to service at the NNL (collectively, the “Plans”), the Contractor shall cooperate and transfer to the new Contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer. If a Commingled Plan is involved, the Contractor shall:
 - (1) Spin off the DOE portion of any Commingled Plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excel of DOE liabilities.
 - (2) Bargain in good faith with DOE or the successor Contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. DOE and the Contractor(s) shall establish an effective date of spinoff. On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (b) If this contract expires or terminates and the DOE has not awarded a successor contract to a new Contractor under which the new Contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the contract has been completed (any one such event may be deemed by the Contracting Officer to be *Contract Completion* for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur regarding the Contractor’s obligations regarding the Plans at the time of *Contract Completion*:

- (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
- (2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of *Contract Completion*. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of *Contract Completion*, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable contract provisions.

43. PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (DOE-H-2059, OCT 2014)

- (a) Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include, but are not limited to, Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered.
- (b) The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits. Furthermore, all wildlife must be protected consistent with programs approved by the Contracting Officer.
- (c) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

44. PRICE-ANDERSON AMENDMENTS ACT NONCOMPLIANCE (DOE-H-2020, OCT 2014)

The Contractor shall establish an internal Price-Anderson Amendments Act (PAAA) noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a PAAA reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

45. PRIVACY ACT SYSTEM OF RECORDS (DOE-H-2018, OCT 2014)

The Contractor shall design, develop, or adopt the following systems of records on individuals to accomplish an agency function pursuant to FAR 52.224-2, *Privacy Act*.

<u>System No.</u>	<u>Title</u>
5	Personnel Records of Former Contractor Employees
10	Energy Employees Occupational Illness Compensation Program
11	Emergency Operations Notification Call List
28	General Training Records
31	Firearms Qualification Records
33	Personnel Medical Records
35	Personnel Radiation Exposure Records
38	Occupational and Industrial Accident Records
48	Security Education and/or Infraction Reports

51	Employer and Visitor Access Control Records
75	Call Detail Records
77	Physical Fitness Test Records

46. PRIVATE USE OF CONTRACT INFORMATION AND DATA

Except as specifically authorized by this contract, or as otherwise approved by the Contracting Officer, information and other data developed or acquired by or furnished to the Contractor in the performance of this contract shall be used only in connection with the work under this contract.

47. PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (ACQUISITION LETTER 2017-05 dated 7/25/2017)

The Contractor agrees that:

- (a) No cost associated with implementation or enforcement of nondisclosure policies, forms or agreements shall be allowable under this contract if such policies, forms or agreements do not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling."
- (b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- (c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

48. PROTECTION OF NAVAL NUCLEAR PROPULSION INFORMATION (UNNPI)

Classified and unclassified Naval Nuclear Propulsion Information shall be protected in accordance with Office of the Chief of Naval Operations (OPNAV) Instruction N9210.3, dated 6/7/2010. Naval Nuclear Propulsion Information shall be protected pursuant to export control requirements and statutes.

49. PUBLIC RELEASE OF INFORMATION

- (a) Information, data, photographs, sketches, advertising, displays, promotional brochures, or other materials related to work under this contract, which the Contractor desires to publish, display, or release internally, to other contractors, to government agencies, or to the public, shall be submitted to the Government for approval at least eight (8) weeks prior to the desired printing or release date. This includes descriptive or promotional material which links or relates, directly or indirectly, the Contractor's product line, manufacturing facilities, or manufacturing capabilities to performance of naval nuclear propulsion work. As part of the approval request, the Contractor shall identify the

specific media to be used as well as other pertinent details of the proposed release. All releases, regardless of tier of supplier, must have the prior approval of the Government.

- (b) Should any information described in (a) above be requested, subpoenaed, or otherwise sought by a court or other judicial or administrative authority, this should be promptly brought to the attention of the Government to permit appropriate measures to be taken to protect the information. Under no circumstances, should this information be released to such authority without prior notification and agreement of the Government.
- (c) The Contractor agrees that this requirement of prior Government approval of any release shall survive the contract and that the Contractor shall not for a period of twenty years subsequent to the issuance of the contract either directly or indirectly issue any such release without the requisite approval of the Government, its successor or assignee.
- (d) The Contractor shall include all provisions of this article including this sentence in all subcontracts under this contract.

50. RELATIONSHIP WITH NAVAL REACTORS (NR) PROGRAM CONTRACTORS

The Contractor agrees to maintain a cooperative relationship with BPMI or its successor contractor, including the transfer of work and funds without the payment of duplicative fees. The Contractor also agrees to maintain the current cooperative relationship(s) with Program suppliers and shipyards.

The Contractor recognizes NR's objective of facilitating the transfer of Contractor employees between the NNL M&O and BPMI (or its successor contractor) with minimal impact on employee benefits. For such transfers and, subject to the approval of the Contracting Officer, the Contractor agrees to maintain continuity of service dates from the previous employer for benefits other than provided in tax qualified plans and/or to adjust such employee benefits, as appropriate.

51. REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT (DOE-H-2065, OCT 2014)

The Contractor shall comply with the following:

- (a) Notify employees annually of their duty to report allegations of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems to an appropriate authority [e.g., NRLFO, Office of the Inspector General (OIG), other law enforcement, supervisor, employee concerns office, security officials]. Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks; fraud; DOE environment, safety, and health violations; theft; computer crimes; contractor mischarging; conflicts of interest; and conspiracy to commit any of these acts. Contractors must also ensure that their employees are aware that they may always report incidents or information directly to the OIG.
- (b) Display the OIG hotline telephone number in buildings and common areas such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies.
- (c) Publish the OIG hotline telephone number in telephone books and newsletters under the Contractor's cognizance.
- (d) Ensure that its employees report to the OIG within a reasonable period of time, but not later than 24 hours after discovery, all alleged violations of law, regulations, or policy, including incidents of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement, that have been referred to Federal, State, or local law enforcement entities.

- (e) Ensure that its employees report to the OIG any allegations of reprisals taken against employees who have reported to the OIG fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (f) Ensure that its managers do not retaliate against DOE contractor employees who report fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (g) Ensure that all employees understand that they must –
 - (1) Comply with requests for interviews and briefings and must provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements;
 - (2) Not impede or hinder another employee's cooperation with the OIG; and
 - (3) Not take reprisals against DOE contractor employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.
- (h) Seek more specific guidance concerning reporting of fraud, waste, abuse, corruption, or mismanagement, and cooperation with the Inspector General, in DOE directives.

52. RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS (DOE-H-2017, OCT 2014)

The Contractor has provided a guarantee of performance from its parent company(s) in the form set forth in Part III, List of Documents, Exhibits, and Other Attachments, Section J, *Performance Guarantee Agreement*. The individual signing the *Performance Guarantee Agreement* for the parent company(s) should be the Responsible Corporate Official.

The Responsible Corporate Official is the person who has sole corporate (parent company(s)) authority and accountability for Contractor performance. DOE may contact, as necessary, the single Responsible Corporate Official identified below regarding Contract performance issues.

Responsible Corporate Official

Name: Tom D'Agostino
Position: President, Fluor Government Group
Company/Organization: Fluor Corporation
Address: 2300 Clarendon Boulevard, Suite 1100, Arlington, VA 22201
Phone: 703.351.6466
Facsimile: 703.469.1593
Email: Tom.D'Agostino@fluor.com

Should the Responsible Corporate Official or their contact information change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change. Identified below is each member of the Corporate Board of Directors that will have corporate oversight.

DOE may contact, as necessary, any member of the Corporate Board of Directors, who is accountable for corporate oversight of the Contractor organization and key personnel.

Corporate Board of Directors:

Name: Tom D'Agostino, Greg Meyer, Jonathan Dowell, Jennifer Large
Position: Chairman, Members
Company/Organization: Fluor Corporation
Address: 2300 Clarendon Boulevard, Suite 1100, Arlington, VA 22201
Phone: 703.351.6466, TBD for Members
Facsimile: 703.469.1593
Email: Tom.D'Agostino@fluor.com, TBD for Members

Should any change occur to the Corporate Board of Directors or their contact information during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

53. RISK MANAGEMENT AND INSURANCE PROGRAMS (DOE-H-2073, DEC 2014)

Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement contracts for management and operation of DOE facilities and other designated long-lived onsite contracts for which the Contractor has established separate operating business units.

(1) BASIC REQUIREMENTS

- (a) Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the Contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.
- (b) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, *Indemnification*, and DEAR 950.70, *Nuclear Indemnification of DOE Contractors*).
- (c) Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, *Insurance under Cost Reimbursement Contracts*, FAR 31.205-19, *Insurance and Indemnification*, DEAR 952.231-71 *Insurance-Litigation and Claims*, and DEAR 970.5228-1, *Insurance-Litigation and Claims*.
- (d) Demonstrate that the insurance program is being conducted in the Government's best interest and at reasonable cost.
- (e) The Contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
- (f) When purchasing commercial insurance, the Contractor shall use a competitive process to ensure costs are reasonable.
- (g) Ensure self-insurance programs include the following elements:

- (1) Compliance with criteria set forth in FAR 28.308, *Self-Insurance*. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e. commercially purchased insurance with Self-Insured Retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.
 - (2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
 - (3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
 - (4) Accounting of self-insurance charges.
 - (5) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:
 - (i) The claims reserve shall be held in a special fund or interest bearing account.
 - (ii) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.
 - (iii) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
 - (iv) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
 - (h) Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.
 - (i) Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.
- (2) PLAN EXPERIENCE REPORTING. The Contractor shall:
- (a) Provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:
 - (1) The amount paid for each claim.
 - (2) The amount reserved for each claim.
 - (3) The direct expenses related to each claim.
 - (4) A summary for the year showing total number of claims.
 - (5) A total amount for claims paid.
 - (6) A total amount reserved for claims.
 - (7) The total amount of direct expenses.
 - (b) Provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g. commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at \$100,000 or greater).

(c) Provide additional claim financial experience data as may be requested on a case-by-case basis.

(3) TERMINATING OPERATIONS. The Contractor shall:

- (a) Ensure protection of the Government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.
- (b) Identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.
- (c) Reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the Contractor shall retain this liability.

(4) SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION.

The Contractor shall:

- (a) Obtain the written approval of the Contracting Officer for any change in program direction; and
- (b) Ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

54. SAFEGUARDS AND SECURITY PROGRAM – ALT I (DOE-H-2066, OCT 2014)

- (a) Pursuant to DEAR 952.204-2, *Security*, the Contractor agrees to comply with all security regulations and contract requirements as incorporated into the contract.
- (b) The Contractor shall comply with the requirements of those DOE Directives, or parts thereof, identified elsewhere in the contract pursuant to DEAR 970.5204-2, *Laws, Regulations and DOE Directives*.

55. SAFETY, HEALTH, ENVIRONMENT, AND SECURITY INFORMATION

The Contractor agrees to promptly advise the Contracting Officer of developments which involve, appear to involve, or are perceived by third parties to involve, the raising of significant safety, health, environment, radiological, or security issues.

56. SEPARATE CORPORATE ENTITY (DOE-H-2015, OCT 2014)

The Contractor under this Contract shall be a separate corporate entity from its parent company(s). The separate corporate entity may be a partnership or joint venture. The separate corporate entity must be set up solely to perform this Contract, and shall be totally responsible for all contract activities. The separate corporate entity shall perform no other commercial work or work for other Government agencies except as may be authorized under the terms of this contract. The Contractor shall not utilize or otherwise divert contract employees to other corporate work except as may be authorized under the terms of the contract or as otherwise authorized by the Contracting Officer.

57. SOURCE AND SPECIAL NUCLEAR MATERIALS AND BY-PRODUCT MATERIALS

The Contractor shall comply with all applicable regulations and instructions of the DOE relative to the control of and accounting for source and special nuclear material and by-product materials (as these terms are defined in the Atomic Energy Act of 1954, as amended). The Contractor shall make such reports and permit such inspections as DOE may require with reference to source and special nuclear materials and by-product materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriation and to minimize all losses of such materials.

58. TRANSITION PERIOD

The Contractor shall perform under a Transition Period, from date of award to commencement of operation. During this Transition Period the Contractor shall make arrangements related to the transfer of personnel and assumption of subcontracts and other agreements.

Allowable cost for this Transition Period shall not exceed \$250,000. There will be no fee paid for performance of the Transition Period.

Transition costs will be reimbursed after receipt of properly completed invoices. Invoices are to be sent by the Contractor, electronically as follows:

TO SUBMIT INVOICES ELECTRONICALLY, VISIT THE DOE OAK RIDGE OFFICE VIPERS WEB SITE AT: <https://vipers.doe.gov>

The cognizant Contractor Official to be notified when the Government receives an improper invoice is:

Name Tom D'Agostino
Phone 703.351.6466

Title President, Fluor Government Group
Email Tom.D'Agostino@fluor.com

59. USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (DOE-H-2072, OCT 2014)

- (a) The Government may provide Government owned and/or leased motor vehicles for the Contractor's use in performance of this contract in accordance with FAR 52.251-2, *Interagency Fleet Management System (IFMS) Vehicles and Related Services*.
- (b) The Contractor shall ensure that its employees use and operate Government owned and/or leased motor vehicles in a responsible and safe manner to include the following requirements:
 - (1) Use vehicles only for official purposes and solely in the performance of the contract.
 - (2) Do not use vehicles for transportation between an employee's residence and place of employment unless authorized by the Contracting Officer.
 - (3) Comply with Federal, State and local laws and regulations for the operation of motor vehicles.
 - (4) Possess a valid State, District of Columbia, or Commonwealth's operator license or permit for the type of vehicle to be operated.
 - (5) Operate vehicles in accordance with the operator's packet furnished with each vehicle.
 - (6) Use seat belts while operating or riding in a Government vehicle.
 - (7) Do not use tobacco products while operating or riding in a Government vehicle.
 - (8) Do not provide transportation to strangers or hitchhikers.
 - (9) Do not engage in "text messaging" while operating a Government vehicle, which includes those activities defined in FAR 52.233-18, *Encouraging Contractor Policies to Ban Text Messaging While Driving*.
 - (10) In the event of an accident, provide information as may be required by State, county or municipal authorities and as directed by the Contracting Officer.
- (c) The Contractor shall –
 - (1) Establish and enforce suitable penalties against employees who use, or authorize the use of Government vehicles for unofficial purposes or for other than in the performance of the contract; and
 - (2) Pay any expenses or cost, without Government reimbursement, for using Government vehicles other than in the performance of the contract.

- (d) The Contractor shall insert this clause in all subcontracts in which Government owned and/or leased vehicles are to be provided for use by subcontractor employees.

60. USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES – ALT II (DOE-H-2064, OCT 2014)

- (a) Acquisition of Information Technology. The Government may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third party services for the Contractor's use in the performance of the contract; and the Contracting Officer may provide guidance to the Contractor regarding usage of such equipment, software, and third party services. The Contractor is not authorized to acquire (lease or purchase) information technology equipment, existing computer software, or third party services at the Government's direct expense without prior written approval of the Contracting Officer. Should the Contractor propose to acquire information technology equipment, existing computer software, or third party services, the Contractor shall provide to the Contracting Officer justification for the need, including a complete description of the equipment, software or third party service to be acquired, and a lease versus purchase analysis if appropriate.
- (b) The Contractor shall immediately provide written notice to the Contracting Officer or designee when an employee of the Contractor no longer requires access to the Government information technology systems.
- (c) The Contractor shall not violate any software licensing agreement, or cause the Government to violate any licensing agreement.
- (d) The Contractor agrees that its employees will not use, copy, disclose, modify, or reverse engineer existing computer software provided to it by the Government except as permitted by the license agreement or any other terms and conditions under which the software is made available to the Contractor.
- (e) If at any time during the performance of this contract the Contractor has reason to believe that its utilization of Government furnished existing computer software may involve or result in a violation of the software licensing agreement, the Contractor shall promptly notify the Contracting Officer, in writing, of the pertinent facts and circumstances. Pending direction from the Contracting Officer, the Contractor shall continue performance of the work required under this contract without utilizing the software.
- (f) The Contractor agrees to include the requirements of this clause in all subcontracts at any tier.
- (g) The Contractor shall comply with the requirements of those DOE Directives, or parts thereof, identified elsewhere in the contract pursuant to DEAR 970.5204-2, *Laws, Regulations and DOE Directives*.

61. WORKERS COMPENSATION INSURANCE (DOE-H-2003, OCT 2014)

- (a) Contractors, other than those whose workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).
- (b) Workers compensation loss income benefit payments, when supplemented by other programs (such as salary continuation, short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.
- (c) Contractors approve all workers compensation settlement claims up to the threshold established by the Contracting Officer for DOE approval and submit all settlement claims above the threshold to DOE for

approval. This allowance does not apply to claims alleged due to exposure to ionizing radiation or toxic and hazardous substances. The Contractor shall inform the Contracting Officer of worker compensation claims for ionizing radiation or toxic and hazardous substances when received and shall receive Contracting Officer agreement prior to settlements.

- (d) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

62. WORKFORCE TRANSITION AND MANAGEMENT

The Contractor shall adhere to currently established requirements in its subcontractor and human resources related actions, and shall fully cooperate with other contractors, as necessary, in order to meet the following objectives: achieve a seamless transition for incumbent employees and minimize transition cost.

Corporate Transition

For purposes of the workforce transition provisions in this clause, the term "incumbent contractor" means Bechtel Marine Propulsion Corporation under contract DE-NR0000031. These provisions do not apply to subcontractors.

Part II – Contract Clauses**SECTION I: CONTRACT CLAUSES****CLAUSES INCORPORATED BY REFERENCE**

The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1). The following FAR clauses are hereby incorporated by reference:

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.202-1	Definitions	Nov 2013
52.203-3	Gratuities	Apr 1984
52.203-5	Covenant Against Contingent Fees	May 2014
52.203-6	Restrictions on Subcontractor Sales to the Government	Sep 2006
52.203-7	Anti-Kickback Procedures	May 2014
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	May 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	May 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	Oct 2010
52.203-13	Contractor Code of Business Ethics and Conduct	Oct 2015
52.203-16	Preventing Personal Conflicts of Interest	Dec 2011
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	Apr 2014
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	Jan 2017
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	May 2011
52.204-9	Personal Identity Verification of Contractor Personnel.	Jan 2011
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	Oct 2016
52.204-13	System for Award Management Maintenance	Oct 2016
52.204-18	Commercial and Government Entity Code Maintenance	Jul 2016
52.204-19	Incorporation by Reference of Representations and Certifications	Dec 2014
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	Jun 2016
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	Oct 2015
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	Jul 2013
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations	Nov 2015
52.210-1	Market Research	Apr 2011
52.211-5	Material Requirements	Aug 2000
52.215-2	Audit and Records - Negotiation	Oct 2010
52.215-8	Order of Precedence - Uniform Contract Format	Oct 1997
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data	Aug 2011
52.215-12	Subcontractor Certified Cost or Pricing Data	Oct 2010

52.215-13	Subcontractor Certified Cost or Pricing Data - Modifications	Oct 2010
52.215-15	Pension Adjustments and Asset Reversions	Oct 2010
52.215-17	Waiver of Facilities Capital Cost of Money	Oct 1997
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	Jul 2005
52.215-19	Notification of Ownership Changes	Oct 1997
52.215-23	Limitations on Pass-Through Charges	Oct 2009
52.219-8	Utilization of Small Business Concerns	Nov 2016
52.219-9	Small Business Subcontracting Plan - Alternate II	Jan 2017 Nov 2016 (Alt. II)
52.219-16	Liquidated Damages - Subcontracting Plan	Jan 1999
52.219-28	Post-Award Small Business Program Re-representation	Jul 2013
52.222-1	Notice to the Government of Labor Disputes	Feb 1997
52.222-3	Convict Labor	Jun 2003
52.222-4	Contract Work Hours and Safety Standards - Overtime Compensation	May 2014
52.222-19	Child Labor - Cooperation with Authorities and Remedies	Oct 2016
52.222-21	Prohibition of Segregated Facilities	Apr 2015
52.222-26	Equal Opportunity	Sep 2016
52.222-29	Notification of Visa Denial	Apr 2015
52.222-37	Employment Reports on Veterans	Feb 2016
52.222-40	Notification of Employee Rights under the National Labor Relations Act	Dec 2010
52.222-50	Combating Trafficking in Persons	Mar 2015
52.222-54	Employment Eligibility Verification	Oct 2015
52.223-2	Affirmative Procurement of Bio-based Products under Service and Construction Contracts	Sep 2013
52.223-5	Pollution Prevention and Right-to-Know Information - Alternate I	May 2011 May 2011 (Alt. I)
52.223-6	Drug-Free Workplace	May 2001
52.223-10	Waste Reduction Program	May 2011
52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners	Jun 2016
52.223-13	Acquisition of EPEAT(R)-Registered Imaging Equipment	Jun 2014
52.223-14	Acquisition of EPEAT(R)-Registered Televisions	Jun 2014
52.223-15	Energy Efficiency in Energy-Consuming Products	Dec 2007
52.223-16	Acquisition of EPEAT(R)-Registered Personal Computer Products - Alternate I	Oct 2015 Jun 2014 (Alt. I)
52.223-17	Affirmative Procurement of EPA-designated Items in Service and Construction Contracts	May 2008
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	Aug 2011
52.223-19	Compliance with Environmental Management Systems	May 2011
52.224-1	Privacy Act Notification	Apr 1984
52.224-2	Privacy Act	Apr 1984
52.225-1	Buy American - Supplies	May 2014
52.225-8	Duty-Free Entry	Oct 2010
52.225-13	Restrictions on Certain Foreign Purchases	Jun 2008
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	Jun 2000
52.227-3	Patent Indemnity	Apr 1984

52.227-10	Filing of Patent Applications - Classified Subject Matter	Dec 2007
52.230-2	Cost Accounting Standards	Oct 2015
52.230-6	Administration of Cost Accounting Standards	Jun 2010
52.232-17	Interest	May 2014
52.232-18	Availability of Funds	Apr 1984
52.232-39	Unenforceability of Unauthorized Obligations	Jun 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	Dec 2013
52.233-1	Disputes - Alternate I	May 2014 Dec 1991 (Alt. I)
52.233-3	Protest after Award - Alternate I	Aug 1996 Jun 1985 (Alt. I)
52.233-4	Applicable Law for Breach of Contract Claim	Oct 2004
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	Apr 1984
52.237-3	Continuity of Services	Jan 1991
52.237-11	Accepting and Dispensing of \$1 Coin	Sep 2008
52.239-1	Privacy or Security Safeguards	Aug 1996
52.242-1	Notice of Intent to Disallow Costs	Apr 1984
52.242-5	Payments to Small Business Subcontractors	Jan 2017
52.242-13	Bankruptcy	Jul 1995
52.244-5	Competition in Subcontracting	Dec 1996
52.244-6	Subcontracts for Commercial Items	Nov 2017
52.246-25	Limitation of Liability - Services	Feb 1997
52.247-63	Preference for U.S.-Flag Air Carriers	Jun 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	Feb 2006
52.247-68	Report of Shipment (REPSHIP)	Feb 2006
52.249-6	Termination (Cost-Reimbursement)	May 2004
52.249-14	Excusable Delays	Apr 1984
52.251-1	Government Supply Sources	Apr 2012
52.251-2	Interagency Fleet Management System Vehicles and Related Services	Jan 1991
52.253-1	Computer Generated Forms	Jan 1991

DEAR CLAUSES INCORPORATED BY REFERENCE

The references cited herein are from the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9). The following DEAR clauses are hereby incorporated by reference:

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
952.202-1	Definitions	-----
952.204-71	Sensitive Foreign Nations Controls	Mar 2011
952.204-77	Computer Security	Aug 2006
952.211-71	Priorities and Allocations for Energy Programs (Contracts)	Apr 2008
952.217-70	Acquisition of Real Property	Mar 2011
952.223-75	Preservation of Individual Occupational Radiation Exposure Records	Apr 1984
952.223-78	Sustainable Acquisition Program	Oct 2010
952.235-71	Research Misconduct	Jul 2005
970.5208-1	Printing	Dec 2000

970.5215-5	Limitation on Fee	Dec 2000
970.5217-1	Strategic Partnership Projects Program	Apr 2015
970.5227-6	Patent Indemnity - Subcontracts	Dec 2000
970.5232-1	Reduction or Suspension of Advance, Partial, or Progress Payments	Dec 2000

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FAR NUMBER	CLAUSE TITLE <i>(Any insertions are italicized within the applicable clause)</i>	DATE OF CLAUSE
52.203-14	Display of Hotline Poster(s)	Oct 2015
52.216-7	Allowable Cost and Payment	Jun 2013
52.217-9	Option to Extend the Term of the Contract	Mar 2000
52.222-35	Equal Opportunity for Veterans	Oct 2015
52.222-36	Equal Opportunity for Workers with Disabilities	Jul 2014
52.223-9	Estimate of Percentage of Recovered Material Content for EPA-Designated Items	May 2008
52.227-23	Rights to Proposal Data (Technical)	Jun 1987
52.247-1	Commercial Bill of Lading Notations	Feb 2006
52.247-67	Submission of Transportation Documents for Audit	Feb 2006
52.252-2	Clauses Incorporated by Reference	Feb 1998
52.252-6	Authorized Deviations in Clauses	Apr 1984
952.203-70	Whistleblower Protection for Contractor Employees	Dec 2000
952.204-2	Security Requirements	Aug 2016
952.204-70	Classification/Declassification	Sep 1997
952.209-72	Organizational Conflicts of Interest	Aug 2009
952.215-70	Key Personnel (Modified)	Dec 2000
952.226-74	Displaced Employee Hiring Preference	Jun 1997
952.227-9	Refund of Royalties	Feb 1995
952.247-70	Foreign Travel	Jun 2010
952.250-70	Nuclear Hazards Indemnity Agreement	Aug 2016
952.251-70	Contractor Employee Travel Discounts	Aug 2009
970.5203-1	Management Controls	Jun 2007
970.5203-2	Performance Improvement and Collaboration	May 2006
970.5203-3	Contractor's Organization	Dec 2000
970.5204-1	Counterintelligence	Dec 2010
970.5204-2	Laws, Regulations, and DOE Directives	Dec 2000
970.5204-3	Access to and Ownership of Records	Oct 2014
970.5215-3	Conditional Payment of Fee, Profit, and other Incentives-Facility Management Contracts	Aug 2009
970.5222-1	Collective Bargaining Agreements Management and Operating Contracts	Dec 2000
970.5222-2	Overtime Management	Dec 2000
970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution	Dec 2000
970.5223-4	Workplace Substance Abuse Programs at DOE Sites	Dec 2010
970.5223-6	Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management	Oct 2010
970.5223-7	Sustainable Acquisition Program	Oct 2010
970.5226-1	Diversity Plan	Dec 2000

970.5226-2	Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	Dec 2000
970.5226-3	Community Commitment	Dec 2000
970.5227-1	Rights in Data-Facilities	Dec 2000
970.5227-4	Authorization and Consent	Aug 2002
970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement	Aug 2002
970.5227-6	Patent Indemnity Subcontracts	Dec 2000
970.5227-8	Refund of Royalties	Aug 2002
970.5227-11	Patent Rights-Management and Operating Contracts, For-Profit Contractor, Non-Technology Transfer	Dec 2000
970.5228-1	Insurance-Litigation and Claims	Jul 2013
970.5229-1	State and Local Taxes	Dec 2000
970.5231-4	Preexisting Conditions	Dec 2000
970.5232-2	Payments and Advances	Dec 2000
970.5232-3	Accounts, Records, and Inspection	Dec 2010
970.5232-4	Obligation of Funds	Dec 2000
970.5232-5	Liability with Respect to Cost Accounting Standards	Dec 2000
970.5232-6	Strategic Partnership Projects Funding Authorization	Apr 2015
970.5232-7	Financial Management System	Dec 2000
970.5232-8	Integrated Accounting	Dec 2000
970.5236-1	Government Facility Subcontract Approval	Dec 2000
970.5242-1	Penalties for Unallowable Costs	Aug 2009
970.5243-1	Changes	Dec 2000
970.5244-1	Contractor Purchasing System	Aug 2016
970.5245-1	Property	Aug 2016

FAR AND DEAR CLAUSES INCORPORATED IN FULL TEXT

52.203-14 Display of Hotline Poster(s) (OCT 2015)

(a) Definition.

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

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

- (1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites-
 - (i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
 - (ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.
- (2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.
- (3) Any required posters may be obtained as follows:

Department of Energy (DOE) Inspector General Hotline Poster:

<https://energy.gov/management/downloads/department-energy-doe-inspector-general-ig-hotline-poster>

- (c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.
- (d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5.5 million, except when the subcontract-
 - (1) Is for the acquisition of a commercial item; or
 - (2) Is performed entirely outside the United States.

(End of clause)

52.216-7 Allowable Cost and Payment (JUN 2013) (AS MODIFIED BY DEAR 952.216-7)

- (a) *Invoicing.*
 - (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.
 - (2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.
 - (3) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.
- (b) *Reimbursing costs.*
 - (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only --
 - (i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
 - (ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --
 - (A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—
 - (1) In accordance with the terms and conditions of a subcontract or invoice; and
 - (2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

- (B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;
 - (C) Direct labor;
 - (D) Direct travel;
 - (E) Other direct in-house costs; and
 - (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
- (iii) The amount of financing payments that have been paid by cash, check or other form of payment to subcontractors.
- (2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—
- (i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
 - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).
- (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.
- (4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.
- (c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks
- (d) *Final indirect cost rates.*
- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
- (2)
- (i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.
 - (ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
 - (iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

- (A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.
 - (B) *General and Administrative expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).
 - (C) *Overhead expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.
 - (D) *Occupancy expenses (intermediate indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.
 - (E) Claimed allocation bases, by element of cost, used to distribute indirect costs.
 - (F) Facilities capital cost of money factors computation.
 - (G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.
 - (H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.
 - (I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.
 - (J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).
 - (K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.
 - (L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.
 - (M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.
 - (N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).
 - (O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).
- (iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:
- (A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

- (B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at <https://www.whitehouse.gov/omb/offices/ofpp/contractorcompcapperformula>
 - (C) Identification of prime contracts under which the contractor performs as a subcontractor.
 - (D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).
 - (E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changes from the previous year's submission).
 - (F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, etc.).
 - (G) Management letter from outside CPAs concerning any internal control weaknesses.
 - (H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.
 - (I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.
 - (J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.
 - (K) Federal and State income tax returns.
 - (L) Securities and Exchange Commission 10-K annual report.
 - (M) Minutes from board of directors meetings.
 - (N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.
 - (O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.
 - (v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this sections, within 60 days after settlement of final indirect cost rates.
- (3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify
- (i) the agreed-upon final annual indirect cost rates,
 - (ii) the bases to which the rates apply,
 - (iii) the periods for which the rates apply,

- (iv) any specific indirect cost items treated as direct costs in the settlement, and
- (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

- (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- (5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.
- (6)
 - (i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d) (5) of this clause, the Contracting Officer may-
 - (A) Determine the amounts due to the Contractor under the contract; and
 - (B) Record this determination in a unilateral modification to the contract.
 - (ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.
- (e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates --
 - (1) Shall be the anticipated final rates; and
 - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.
- (g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be --
 - (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or
 - (2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.*

- (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --
 - (i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
 - (ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --
 - (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
 - (B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
 - (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

52.217-9 Option to Extend the Term of the Contract (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years (*excluding the Transition Period*).

(End of clause)

52.222-35 Equal Opportunity for Veterans (OCT 2015)

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

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at FAR 22.1301.

- (b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

- (c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

52.222-36 Equal Opportunity for Workers with Disabilities (JUL 2014)

- (a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

- (b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008)

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

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

- (b) The Contractor, on completion of this contract, shall-

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to the Contracting Officer.

(End of clause)

52.227-23 Rights to Proposal Data (Technical) (JUN 1987)

Except for data contained on pages [N/A], it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in the proposal dated 3 2018, upon which this contract is based.

(End of clause)

52.247-1 Commercial Bill of Lading Notations (FEB 2006)

When 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. 89233018CNR000004. This may be confirmed by contacting *the Naval Reactors Laboratory Field office at the address listed in the contract.*

(End of clause)

52.247-67 Submission of Transportation Documents for Audit (FEB 2006)

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid-

- (1) By the Contractor under a cost-reimbursement contract; and
- (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

- (c) Contractors shall submit the above referenced transportation documents to-

*General Services Administration, Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive,
Arlington, VA 22202*

(End of clause)

52.252-2 Clauses Incorporated by Reference (FEB 1998)

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

FAR Clauses: https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title48/48tab_02.tpl

DEAR Clauses: <https://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation>

Or

<http://farsite.hill.af.mil/vmdoea.htm>

(End of clause)

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 Regulation (48 CFR Chapter 9)* clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)

- (a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.
- (b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

(End of Clause)

952.204-2 Security Requirements (AUG 2016)

- (a) *Responsibility.* It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) *Regulations.* The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.
- (c) *Definition of classified information.* The term Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified

National Security Information, as amended, or prior executive orders, which is identified as National Security Information.

- (d) *Definition of restricted data.* The term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 (Section 142, as amended, of the Atomic Energy Act of 1954).
- (e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information-(1) Relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.
- (f) *Definition of national security information.* The term "National Security Information" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.
- (g) *Definition of special nuclear material.* The term "special nuclear material" means-(1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 (section 51 as amended, of the Atomic Energy Act of 1954) has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) *Access authorizations of personnel.*
 - (1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.
 - (2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.
 - (i) A review must-Verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.
 - (ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).
 - (ii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those-(A) Governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (B) prohibiting discrimination in employment,

such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

- (iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed testing designated positions in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.
- (v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.
- (vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:
 - (A) The date(s) each Review was conducted;
 - (B) Each entity that provided information concerning the individual;
 - (C) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;
 - (D) A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and
 - (E) The results of the test for illegal drugs.
- (i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).
- (j) *Foreign ownership, control, or influence.*
 - (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. The Contractor will submit the Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

- (2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
- (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.
- (4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.
- (k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.
- (l) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(End of clause)

952.204-70 Classification/Declassification (SEP 1997)

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

The original decision to classify or declassify information is considered an inherently governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making

classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

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

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

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

(End of clause)

952.209-72 Organizational Conflicts of Interest (AUG 2009)

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

(1) Use of Contractor's Work Product.

- (i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of 5 years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
- (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such

statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

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

(2) Access to and use of information.

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

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

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

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

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

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

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

(c) Disclosure after award.

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

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

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

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

(End of clause)

952.215-70 Key Personnel (DEC 2000) (Modified)

- (a) The personnel positions listed in this contract in *Section J* are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel positions, the Contractor must:
 - (1) Notify the Contracting Officer reasonably in advance;
 - (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and
 - (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

(End of clause)

952.226-74 Displaced Employee Hiring Preference (JUNE 1997)

- (a) Definition. Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.
- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

(End of clause)

952.227-9 Refund of Royalties (FEB 1995)

- (a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.
- (b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is

represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.

- (c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.
- (d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- (e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.
- (f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(End of clause)

952.247-70 Foreign Travel (JUN 2010)

Contractor foreign travel shall be conducted pursuant to the requirements contained in Department of Energy (DOE) Order 551.1C, Official Foreign Travel, or its successor in effect at the time of award.

(End of Clause)

952.250-70 Nuclear Hazards Indemnity Agreement (AUG 2016)

- (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 \$500 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 known, 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 cause 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 may 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, and Accounts, records, and inspection, 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 that 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.

Effective date

() See note II below for instructions related to this section on Effective Date.

Relationship to general indemnity

() See note III below for instructions related to this section on Relationship to General Indemnity.

(End of clause)

Note I

Paragraph (i) of the clause will be replaced with "Reserved" in contracts specifically exempted from civil penalties by section 234 of the Act. That subsection provides that the following DOE contractors are not subject to the assessment of civil penalties:

- (1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;
- (2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;
- (3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;
- (4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;
- (5) Princeton University (and any subcontractor or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;
- (6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and
- (7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

(End of note)

Note II

Contracts with an effective date after the date of June 12, 1996, do not require the effective date provision in this clause. Delete the title.

Use the EFFECTIVE DATE title and the following language, for those contracts:

"() This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after ___."

- (1) Those that contained an indemnity pursuant to Public Law 85-840 prior to August 20, 1988, include the effective date provision above, inserting the effective date of the contract modification that replaced the Public Law 85-804 indemnity with an interim Price-Anderson based indemnity. Pursuant to the Price-Anderson Amendments Act, this substitution must have taken place by February 20, 1989.
- (2) Those that contained, and continue to contain, either of the previous Nuclear Hazards Indemnity clauses, include the effective date provision above, inserting "August 20, 1988."
- (3) Those with an effective date between August 20, 1988, and the date of the Final Rule, that (a) had "interim coverage" or (b) did not have "interim coverage" but have now been determined to be covered under the PAAA, include the effective date provision above, inserting the contract effective date.

Note III

The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 950.7101. Caution: Be aware that for contracts that will have this provision added which do not contain an effective date provision, this paragraph shall be marked (1). In the event an Effective Date provision has been included, it shall be marked (m).

"() To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply."

(End of note)

952.251-70 Contractor Employee Travel Discounts (AUG 2009)

- (a) The Contractor shall take advantage of travel discounts offered to Federal Contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the Contractor employee to furnish them a letter of identification signed by the authorized Contracting Officer.
- (b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.
- (c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.
- (d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.
- (e) Car rentals. Surface Deployment and Distribution Command (SDDC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.
- (f) Obtaining travel discounts.
 - (1) To determine which vendors offer discounts to Government contractors, the Contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National

Telecommunications. The Contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

- (2) The vendor providing the service may require the Government contractor to furnish a letter signed by the Contracting Officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

(End of clause)

970.5203-1 Management Controls (JUN 2007)

- (a) (1) 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 including consideration of outsourcing of functions 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 waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the Contractor in connection with the 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.
- (2) The systems of controls employed by the Contractor shall be documented and satisfactory to DOE.
- (3) 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 controls in their areas of assigned responsibility.
- (4) The Contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed by the Contracting Officer, the Contractor shall supply to the Contracting Officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 48 CFR 970.5232-3, Accounts, records, and inspection.

- (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.

(End of Clause)

970.5203-2 Performance Improvement and Collaboration (MAY 2006)

- (a) The Contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, outsourcing decisions, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.
- (b) The Contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.
- (c) The Contractor may consult with the Contracting Officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The Contractor may request the assistance of the Contracting Officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.
- (d) The Contractor shall notify the Contracting Officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

(End of Clause)

970.5203-3 Contractor's Organization (DEC 2000)

- (a) Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.
- (b) Supervisory representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site, and any work off-site, at all times.
- (c) Control of employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the Contracting Officer may require, with the approval of the Secretary of Energy, the Contractor to remove the employee from work under the contract. This includes the right to direct the Contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.

- (d) Standards and procedures. The Contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the Contracting Officer.

(End of Clause)

970.5204-1 Counterintelligence (DEC 2010)

- (a) The Contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475.1, Counterintelligence Program, or its successor; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- (b) The Contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

(End of Clause)

970.5204-2 Laws, Regulations, and DOE Directives (DEC 2000)

- (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 (d) 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 of this contract entitled, "Changes."
- (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 the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." 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) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(End of Clause)

970.5204-3 Access to and Ownership of Records (OCT 2014)

- (a) *Government-owned records.* Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 CFR, Chapter XII, Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "Privacy Act."
- (b) *Contractor-owned records.* The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause.
 - (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, excluding records operated and maintained by the Contractor in Privacy Act system of records. Employee-related systems of record may include, but are not limited to: Employee Relations Records (DOE-3), Personnel Records of Former Contractor Employees (DOE-5), Payroll and Leave Records (DOE-13), Report of Compensation (DOE-14), Personnel Medical Records (DOE-33), Employee Assistance Program (EAP) Records (DOE-34) and Personnel Radiation Exposure Records (DOE-35).
 - (2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
 - (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and
 - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
 - (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

- (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) *Contract completion or termination.* Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.
- (d) *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 at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, 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. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) *Applicability.* This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.
- (f) *Records maintenance and retention.* Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 CFR Chapter XII, Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.
- (g) *Subcontracts.* The contractor shall include the requirements of this clause in all subcontracts that contain the Integration of Environment, Safety and Health into Work Planning and Execution clause at 952.223-71 or, the Radiation Protection and Nuclear Criticality clause at 952.223-72.

(End of clause)

970.5215-3 Conditional Payment of Fee, Profit, and other Incentives-Facility Management Contracts (AUG 2009)

(a) *General.*

- (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon-
 - (i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and
 - (ii) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.
- (2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.
- (3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.
- (4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) *Reduction amount.*

- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.
- (2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26 percent nor greater than 100 percent of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure.
- (3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).
 - (i) Degree of control the Contractor had over the event or incident.
 - (ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.
 - (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

- (iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.
 - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).
 - (vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).
 - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs). * * *
 - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4) (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.
- (ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.
- (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the Contracting Officer or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.
- (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)
- (v) At the end of the contract-
- (A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or
 - (B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of

cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

- (c) *Environment, Safety and Health (ES&H)*. Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
- (1) *First Degree*: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.
 - (i) Type A accident (defined in DOE Order 225.1B, or successor version).
 - (ii) Two Second Degree performance failures during an evaluation period.
 - (2) *Second Degree*: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:
 - (i) Type B accident (defined in DOE Order 225.1B, or successor version).
 - (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
 - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.
 - (3) *Third Degree*: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
 - (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 232.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.
 - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.
 - (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.
 - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.
- (d) *Safeguarding restricted data and other classified information*. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:
- (1) *First Degree*: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in,

exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (2) *Second Degree*: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.
- (3) *Third Degree*: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

- (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
- (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.
- (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(End of clause)

970.5222-1 Collective Bargaining Agreements Management and Operating Contracts (DEC 2000)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The Contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

(End of Clause)

970.5222-2 Overtime Management (DEC 2000)

- (a) The Contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.
- (b) The Contractor shall notify the Contracting Officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.
- (c) The Contracting Officer may require the submission, for approval, of a formal annual overtime control plan whenever Contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the Contracting Officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum-
 - (1) An overtime premium fund (maximum dollar amount);
 - (2) Specific controls for casual overtime for non-exempt employees;
 - (3) Specific parameters for allowability of exempt overtime;
 - (4) An evaluation of alternatives to the use of overtime; and
 - (5) Submission of a semi-annual report that includes for exempt and non-exempt employees-
 - (i) Total cost of overtime;
 - (ii) Total cost of straight time;
 - (iii) Overtime cost as a percentage of straight-time cost;

- (iv) Total overtime hours;
- (v) Total straight-time hours; and
- (vi) Overtime hours as a percentage of straight-time hours.

(End of Clause)

970.5223-1 Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000)

- (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 entitled "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) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.
 - (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 choose not to require the subcontractor to submit a Safety Management System for the Contractor's review and approval.

(End of clause)

970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2010)

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

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

(End of clause)

970.5223-6 Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management (OCT 2010)

Since this contract involves Contractor operation of Government-owned facilities and/or motor vehicles, the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or motor vehicles. Information on the requirements of the Executive Order may be found at <http://www.archives.gov/federal-register/executive-orders/>.

(End of Clause)

970.5223-7 Sustainable Acquisition Program (OCT 2010)

- (a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well-being of its Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well-being of Federal employees, contract service providers and visitors using the facility.
- (b) Green purchasing or sustainable acquisition has several interacting initiatives. The Contractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Contractor may request an equitable adjustment to the terms of its contract using the procedures at 48 CFR 970.5243-1 Changes. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:
 - (1) Recycled Content Products are described at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products>
 - (2) Biobased Products are described at <http://www.biopreferred.gov/>.
 - (3) Energy efficient products are at <http://energystar.gov/> products for Energy Star products.

- (4) Energy efficient products are at <https://www.epa.gov/fec/federal-green-purchasing-electronics-epeat-energy-star-and-femp> for FEMP designated products.
 - (5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site.
 - (6) Greenhouse gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>.
 - (7) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>.
 - (8) Water efficient plumbing products are at <http://epa.gov/watersense>.
- (c) The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product-
- (1) Is not available;
 - (2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;
 - (3) Does not meet performance needs; or,
 - (4) Cannot be delivered in time to meet a critical need.
- (d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<https://www.federalregister.gov/documents/2007/01/26/07-374/strengthening-federal-environmental-energy-and-transportation-management>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: https://energy.gov/sites/prod/files/2017/10/f37/FY17%20Acquisition%20Guide_v3.pdf#chapter23.1
- (e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor. This requirement should not be flowed down to subcontractors.
- (f) In complying with the requirements of paragraph (c) of this clause, the Contractor shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.
- (g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable

products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default (see FAR 52.249-6, Termination (Cost Reimbursement)).

- (h) These provisions shall be flowed down only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services. The Subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Subcontractor will advise the Contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.
- (i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

(End of Clause)

970.5226-1 Diversity Plan (DEC 2000)

The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The Contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in the Appendix. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer), and (6) the prevention of profiling based on race or national origin.

(End of Clause)

970.5226-2 Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (DEC 2000)

- (a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.
- (b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

(End of clause)

970.5226-3 Community Commitment (DEC 2000)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the

community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

(End of Clause)

970.5227-1 Rights in Data-Facilities (DEC 2000)

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.
- (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.
- (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

- (1) The Government shall have:
 - (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
 - (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Strategic Partnership Projects Program;

- (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
 - (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and
 - (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.
- (2) The Contractor shall have:
- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and
 - (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.
- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.
- (c) Copyrighted Material.
- (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.
 - (2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c) (1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting.

- (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
- (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
 - (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

- (e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. 89233018CNR000004 with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection

with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of notice)

(f) Rights in restricted computer software.

- (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy Contract No. 89233018CNR000004. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
 - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. 89233018CNR000004 with Fluor Marine Propulsion, LLC.

(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 [], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."
- (g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of clause)

970.5227-4 Authorization and Consent (AUG 2002)

- (a) 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) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.
- (c) (1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed \$100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.
- (2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed \$100,000.
- (3) Omission of an authorization and consent clause from any subcontract, including those valued less than \$100,000 does not affect this authorization and consent.

(End of clause)

970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

- (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) If any person files a 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 hereunder, 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. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.
- (c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$100,000.

(End of clause)

970.5227-6 Patent Indemnity Subcontracts (DEC 2000)

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 any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

(End of clause)

970.5227-8 Refund of Royalties (AUG 2002)

- (a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:
 - (1) Name and address of licensor;
 - (2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (4) Percentage or dollar rate of royalty per unit;
 - (5) Unit price of contract item;
 - (6) Number of units;
 - (7) Total dollar amount of royalties; and
 - (8) A copy of the proposed license agreement.
- (b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.
- (c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.
- (d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.
- (e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are

approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

- (f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.
- (g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.
- (h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(End of clause)

970.5227-11 Patent Rights-Management and Operating Contracts, For-Profit Contractor, Non-Technology Transfer (DEC 2000)

- (a) Definitions.
 - (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR part 781.
 - (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR part 784.
 - (3) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
 - (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
 - (5) Patent Counsel means DOE Patent Counsel assisting the contracting activity.
 - (6) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
 - (7) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.
- (b) Allocation of principal rights-
 - (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b) (2) of this clause or by a request for foreign patent rights in accordance with subparagraph (d) (2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

- (2) Greater rights determinations. The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c) (2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(c) Subject invention disclosures-

- (1) Contractor procedures for reporting subject inventions to Contractor personnel. Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and the maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.
- (2) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c) (1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:
 - (i) The contract number under which the subject invention was made;
 - (ii) The inventor(s) of the subject invention;
 - (iii) A description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
 - (iv) The date and identification of any publication, on sale or public use of the invention;
 - (v) The date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
 - (vi) A statement indicating whether the subject invention concerns exceptional circumstances pursuant to 35 U.S.C. 202(ii), related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

- (vii) All sources of funding by Budget and Resources (B&R) code; and
 - (viii) The identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Strategic Partnership Projects agreements. Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.
- (3) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor.
- (4) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c) (2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (5) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.
- (6) Duplication and disclosure of documents. 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; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR 401.13.
- (d) Minimum rights of the Contractor-
- (1) Contractor License-
 - (i) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c) (2) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
 - (ii) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine the Contractor's license is non-transferrable, on a case-by-case basis.
 - (iii) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license 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 DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the

geographical areas in which the Contractor, its licensee, or its domestic subsidiaries or affiliates achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

- (iv) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations.
- (2) Contractor's right to request foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the foreign country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE Contracting Officer, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.
- (e) Examination of records relating to inventions-
 - (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
 - (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.
 - (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.
- (f) Subcontracts-
 - (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
 - (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202(a) (ii).

- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work.
 - (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
 - (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
 - (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify 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 a subcontract.
 - (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (g) Atomic energy-
- (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
 - (2) Patent agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (g)(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.
- (h) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.
- (i) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.
- (j) Reports-
- (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.

- (2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to close out of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.
- (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 the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
- (l) Classified inventions-
- (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
- (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.
- (m) Patent functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (n) Annual appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(End of clause)

970.5228-1 Insurance-Litigation and Claims (JUL 2013)

- (a) The contractor must comply with 10 CFR part 719, Contractor Legal Management Requirements, if applicable.
- (b) (1) Except as provided in paragraph (b)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.
- (2) The contractor may, with the approval of the Contracting Officer, maintain a self-insurance program in accordance with FAR 28.308; 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.
- (c) 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. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.
- (d) Except as provided in paragraph (f) 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 reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance without regard to the clause of this contract entitled "Obligation of Funds."
- (e) The Government's liability under paragraph (d) 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.
- (f) (1) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities to third parties, including contractor employees, and directly associated costs which may include but are not limited to litigation costs, counsel fees, judgments and settlements-
- (i) Which are otherwise unallowable by law or the provisions of this contract, including the cost reimbursement limitations contained in 48 CFR part 31, as supplemented by 48 CFR 970.31;
- (ii) 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; or
- (iii) Which were caused by contractor managerial personnel's-
- (A) Willful misconduct;
- (B) Lack of good faith; or
- (C) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (2) The term "contractor's managerial personnel" is defined in the Property clause in this contract.
- (g) (1) All litigation costs, including counsel fees, judgments and settlements shall be segregated and accounted for by the contractor separately. If the Contracting Officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.
- (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.

- (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (f) of this clause is not allowable.
- (h) 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 non-reimbursable costs incurred in connection with contract performance.

(End of Clause)

970.5229-1 State and Local Taxes (DEC 2000)

- (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 clause, the procedures and requirements of the clause 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.

(End of Clause)

970.5231-4 Preexisting Conditions (DEC 2000)

- (a) The Department of Energy agrees to reimburse the Contractor, and the Contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the Contractor arising out of any condition, act, or failure to act which occurred before the Contractor assumed responsibility on [10/01/2018]. To the extent the acts or omissions of the Contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to [10/01/2018], the Contractor shall be responsible in accordance with the terms and conditions of this contract.
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

(End of Clause)

970.5232-2 Payments and Advances (DEC 2000)

- (a) 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. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.
- (b) 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 (for example, negotiated fixed amounts) 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 therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefore 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.
- (c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special 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.
- (d) 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.
- (e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) 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, collections accruing to the Contractor in connection with the work under this contract, 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 shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, 48 CFR 970.5228-1, "Insurance-Litigation and Claims");
 - (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; and
 - (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the Contractor under this clause, there shall be deducted-
 - (i) Any claim which the Government may have against the Contractor in connection with this contract; and
 - (ii) 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.
- (f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (g) 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.
- (h) 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 imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
- (i) 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 therefore.
- (j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

(End of clause)

970.5232-3 Accounts, Records, and Inspection (DEC 2010)

- (a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and 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.
- (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 designees in accordance with the provisions of Clause, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, 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 fee 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 otherwise provided in this contract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, 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 and 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 (g) and paragraph (h) 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) 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 or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

- (3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.
- (i) Internal audit. The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.
- (1) Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe-
- (i) The internal audit organization's placement within the contractor's organization and its reporting requirements;
 - (ii) The audit organization's size and the experience and educational standards of its staff;
 - (iii) The audit organization's relationship to the corporate entities of the Contractor;
 - (iv) The standards to be used in conducting the internal audits;
 - (v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;
 - (vi) The intended use of external audit resources;
 - (vii) The plan for audit of subcontracts, both pre-award and post-award; and
 - (viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.
- (2) By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.
- (3) By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.
- (4) The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.
- (j) Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

(End of Clause)

970.5232-4 Obligation of Funds (DEC 2000)

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is \$250,000.00. 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 the amount presently obligated. Such collections, to the extent actually received by the Contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph 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 Termination clause of this contract 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 and any negotiated fixed amount. 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 imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract; 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 available under paragraph (a) of this clause), plus the Contractor's best estimate of collections to be received and available during the day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed rate for only days and to cover the Contractor's unpaid fee and any negotiated fixed amounts, 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) of this clause), less the amount of the Contractor's fee then earned but not paid and any negotiated fixed amounts, is in the Contractor's best judgment sufficient only to liquidate outstanding encumbrances 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 Termination clause of this contract.
- (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 directives may be amended or supplemented from time to time by DOE. The contractor agrees-
- (1) To comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives;
 - (2) 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 Termination clause of this contract.

(End of Clause)

970.5232-5 Liability with Respect to Cost Accounting Standards (DEC 2000)

- (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 published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Senior Procurement Executive.
- (b) The Contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at 52.230-2, "Cost Accounting Standards," and 52.230-6, "Administration of Cost Accounting Standards," if 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 the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

(End of clause)

970.5232-6 Strategic Partnership Projects Funding Authorization (APR 2015)

Any uncollectible receivables resulting from the Contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the Contractor, and the United States Government shall have no liability to the Contractor for the Contractor's uncollected receivables. The Contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the Contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The Contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the Contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The Contractor's utilization of contractor corporate funds does not relieve the Contractor of its responsibility to comply with all requirements for Strategic Partnership Projects applicable to this contract.

(End of clause)

970.5232-7 Financial Management System (DEC 2000)

The Contractor shall maintain and administer a financial management system that 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; permits the preparation of accounts and accurate, reliable financial and statistical reports; and 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 currently existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the Contracting Officer, shall submit any such deviation to DOE for written approval before implementation.

(End of clause)

970.5232-8 Integrated Accounting (DEC 2000)

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

(End of clause)

970.5236-1 Government Facility Subcontract Approval (DEC 2000)

Upon request of the Contracting Officer and acceptance thereof by the Contractor, 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.

(End of Clause)

970.5242-1 Penalties for Unallowable Costs (AUG 2009)

- (a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.
- (b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.
- (c) Unallowable costs are either expressly unallowable or determined unallowable.
 - (1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.
 - (2) A cost determined unallowable is one which, for that Contractor-
 - (i) Was subject to a Contracting Officer's final decision and not appealed;
 - (ii) The Civilian Board of Contract Appeals or a court has previously ruled as unallowable; or
 - (iii) Was mutually agreed to be unallowable.
- (d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is-
 - (1) Expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or
 - (2) Determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (e) The Contracting Officer may waive the penalty provisions when-
 - (1) The Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

- (2) The amount of the unallowable costs allocated to covered contracts is \$10,000 or less; or
- (3) The Contractor demonstrates to the Contracting Officer's satisfaction that-
 - (i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the Contractor's submission for settlement of costs; and
 - (ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

(End of clause)

970.5243-1 Changes (DEC 2000)

- (a) Changes and adjustment of fee. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause 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.

(End of Clause)

970.5244-1 Contractor Purchasing System (AUG 2016)

- (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 and 48 CFR subpart 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. 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. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.
- (b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 48 CFR subpart 970.41.
- (c) *Acquisition of real property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.
- (d) *Advance notice of proposed subcontract awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(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 subcontractor. 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 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).

(f) *Bonds and insurance.*

- (1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of \$150,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.
- (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$150,000, 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. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).
- (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than \$25,000, but not greater than \$100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.
- (4) 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 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$500,000 require the prior concurrence 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 non-availability for individual items valued at \$500,000 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 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 970.4402-3.
- (j) *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). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.
- (k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.
- (l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.
- (m) *Leasing of motor vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.
- (n) (Reserved)
- (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 subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 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 subpart 8.5
 - (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 versus lease determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus 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 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 48 CFR 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 48 CFR 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.
- (x) *Subcontract flow-down requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:
- (1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
 - (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.

- (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
- (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
- (y) *Legal services.* Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

(End of clause)

970.5245-1 Property (AUG 2016)

- (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 its 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, and such other actions as may be 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) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property

management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

- (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
- (f) *Risk of loss of Government property.*
- (1) (i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following-
 - (A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;
 - (B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or
 - (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i) (1) of this clause.
 - (ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.
- (2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f) (1) of this clause, the Contractor's compensation to the Government shall be determined as follows:
 - (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus 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. 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 compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of 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.
- (3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f) (1) of this clause is not allowable.
- (g) *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 with a value above the threshold set out in the Contractor's approved property management system, 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.
- (h) *Government property for Government use only.* Government property shall be used only for the performance of this contract.
- (i) *Property Management-*
 - (1) *Property Management System.*
 - (i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.
 - (ii) In order for a property management system to be approved, it must provide for-
 - (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
 - (B) (Reserved)
 - (C) Full integration with the Contractor's other administrative and financial systems; and
 - (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
 - (iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i) (2) of this clause.
 - (2) *Property Inventory.*
 - (i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.
 - (ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- (j) The term "contractor's managerial personnel" as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of-
 - (1) All or substantially all of the Contractor's business; or
 - (2) All or substantially all of the Contractor's operations at any one facility or separate location to which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract; or

- (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
 - (5) A separate and discrete major task or operation in connection with the performance of this contract.
- (k) The Contractor shall include this clause in all cost reimbursable subcontracts.
- (End of clause)

Part III – List of Documents, Exhibits, and Other Attachments

SECTION J: LIST OF ATTACHMENTS

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