



Department of Energy

Argonne Site Office
9800 South Cass Avenue
Argonne, Illinois 60439

MAR 13 2009

Dr. Robert Rosner
Director, Argonne National Laboratory
President, UChicago Argonne, LLC
9700 South Cass Avenue
Argonne, IL 60439

Dear Dr. Rosner:

**SUBJECT: MODIFICATION NO. M039 TO U.S. DEPARTMENT OF ENERGY
CONTRACT DE-AC02-06CH11357**

Enclosed for your records is a fully executed copy of the subject modification which revises the Argonne Prime Contract to incorporate the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (Recovery Act or Act) as follows:

- Amends Part I, SECTION H, SPECIAL CONTRACT REQUIREMENTS, TABLE OF CONTENTS, to include the clause title "Special Provisions Relating To Work Funded Under American Recovery and Reinvestment Act of 2009 (Feb 2009)" as Clause No.41; and
- Updates Part I, SECTION H, SPECIAL CONTRACT REQUIREMENTS, to add Clause No. 41 entitled "Special Provisions Relating To Work Funded Under American Recovery and Reinvestment Act of 2009 (Feb 2009)" as Clause No.41.

If you have questions or are in need of additional information, please contact me at 630/252-2075.

Sincerely,

Sergio E. Martinez
Contracting Officer

Enclosure:
As Stated

cc: R. Zimmer, UofC, w/encl.
L. Hill, UofC/ANL, w/encl.
J. Kroll, UofC, w/encl.
G. McKeown, UofC, w/encl.
B. Arnold, ANL, w/encl.
L. Miller, ANL, w/encl.
M. Besancon, ANL, w/encl.
S. Richardson, ANL, w/encl.
L. Novotny, ANL, w/encl.
R. Malhotra, ANL, w/encl.
P. Moonier, ANL, w/encl.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE PAGE OF PAGES
1 1

2. AMENDMENT/MODIFICATION NO. 3. EFFECTIVE DATE 4. REQUISITION/PURCHASE REQ. NO. 5. PROJECT NO. (If applicable)
M039 03/13/2009 N/A

6. ISSUED BY CODE 7. ADMINISTERED BY (If other than Item 6) Code
U.S. Department of Energy Office of Science/Argonne Site Office 9800 South Cass Avenue Argonne, IL 60439 See Block 6.

8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code) 9.A. AMENDMENT OF SOLICITATION NO. 9.B. DATED (SEE ITEM 11)
UChicago Argonne, LLC 5801 South Ellis Avenue Chicago, IL 60637 10.A. MODIFICATION OF Contract/Order NO. DE-AC02-06CH11357 10.B. DATED (SEE ITEM 13) July 31, 2006

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning ___ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
NOT APPLICABLE

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

- A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
Mutual Agreement of the Parties
- D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is required to sign this document and return signed copies to DOE.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section heading, including solicitation/contract subject matter where feasible.)

1. PART I, SECTION H, SPECIAL CONTRACT REQUIREMENTS TABLE OF CONTENTS, dated March 13, 2009 (attached hereto) is substituted for the previous PART 1, SECTION H, SPECIAL CONTRACT REQUIREMENTS TABLE OF CONTENTS incorporated into this contract under Modification No. M037.
2. PART I, SECTION H, SPECIAL CONTRACT REQUIREMENTS, dated March 13, 2009 (attached hereto) is substituted for the previous SECTION H, SPECIAL CONTRACT REQUIREMENTS incorporated into this contract under Modification No. M037.

15A. NAME AND TITLE OF SIGNER (Type or print) 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
Donald H. Levy, Vice President for Research SERGIO CONTRERAS
CONTRACTING OFFICER, ASO
U.S. DEPARTMENT OF ENERGY

15B. CONTRACTOR/OFFEROR 15C. DATE SIGNED 16B. UNITED STATES OF AMERICA 16C. DATE SIGNED
BY: [Signature] 3-11-09 BY: [Signature] 3/13/09
(Signature of person authorized to sign) (Signature of Contracting Officer)

PART I

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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SPECIAL CONTRACT REQUIREMENTS

CLAUSE H.1 - LABORATORY FACILITIES

Laboratory Facilities. DOE agrees to furnish and make available to the Contractor, for its use in performing the work under this contract, the Laboratory facilities designated as follows:

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the Argonne National Laboratory Site at Argonne, DuPage County, Illinois; and
- (b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract.

DOE reserves the right to make part of the above-mentioned land or facilities available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.

CLAUSE H.2 - LONG-RANGE PLANNING, PROGRAM DEVELOPMENT AND BUDGETARY ADMINISTRATION

- (a) Basic considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.
- (b) Institutional/Business planning. It is the intent of the Parties to develop an Institutional/Business Plan covering a five-year period, which will be updated at least annually. Development of the Institutional/Business Plan is a component of the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the period covered by the plan. The Institutional/Business Plan approved by the DOE Site Office Manager provides guidance to the Contractor for long-range planning of Laboratory programs, site and facility development, and for budget preparation. It also serves as a baseline for placement of work at the Laboratory.

- (c) DOE approval. DOE approval of the program proposals and budget estimates will be reflected in work authorizations and financial plans developed and issued to the Contractor.

CLAUSE H.3 - WORK AUTHORIZATION

- (a) Work programs shall be developed by the Contractor and approved by DOE in accordance with applicable DOE directives, and shall constitute work to be performed under this Contract during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. The Contractor shall consult with DOE, as necessary, during the process of developing work programs. Subject to the other provisions of this contract, changes in the agreed work program, not constituting major changes, may be made by the Contractor when it appears to the Contractor, to be in the best interest of the scientific and technical objectives of the agreed work program to do so. It is understood that the nature of the research and development work under this Contract is of a specialized character not readily reducible to production schedules. In view of these circumstances, it is agreed that the research and development work is performed on a best effort basis.
- (b) Due to the critical character of the work from the standpoint of national significance, it is understood by the Parties hereto that very close collaboration will be required between the Contractor and DOE with respect to direction, emphasis, trends and adequacy of the total program.
- (c)
 - (1) The annual work program and budget are principal devices used by DOE in program development, integration, execution, and cost estimating. To make the work program and budget most effective in assuring comprehensive coverage of DOE missions, it is the responsibility of DOE to keep the operators of DOE's laboratories continually advised of DOE's overall program goals, scientific and technological problems, and its current long range objectives. In light of such information, the Contractor will propose possible new objectives and present preliminary work programs in the area of its competence which, from its point of view, will either strengthen the overall DOE program or provide additional support in areas which, in the Contractor's judgment, are being inadequately exploited, or initiate new areas of investigation which appear of potential importance.
 - (2) It is the responsibility of DOE to formulate overall program budgets, taking into consideration the proposals submitted by the Contractor, consistent with funds appropriated by the Congress and all its other program needs.

- (3) The Contractor shall prepare a final work program and budget consistent with DOE's overall program budget. Upon DOE approval, it is the Contractor's responsibility to conduct its work program within limits established by these approvals unless and until they are modified by DOE.
- (d) In accordance with the basic considerations stated in paragraph (c) above, the Contractor and DOE will utilize the Program Budget procedures on a Government fiscal year basis for the establishment of the Laboratory Program Budget. Procedures for the presentation of work programs and cost estimates shall be jointly developed. In order to meet the requirements of Government budgetary practice, the Parties agree:
 - (1) As early as possible in each calendar year, DOE shall supply the Contractor with the dollar amounts for the Laboratory contained in the President's Budget, with Program assumptions and guidance which the Contractor will be expected to consider in the development of its program and budget, and with all changes to existing budget and accounting policies and procedures to be used in the current budget preparation.
 - (2) Prior to April 1 (or such other date as may be agreed upon) the Contractor shall submit to DOE for approval a comprehensive work program for the next two fiscal years, together with a description of the current work program, and the Contractor shall submit a budget estimate for the next two fiscal years, together with a revised budget estimate for the current fiscal year.
 - (3) As soon as possible after October 1 of each year, DOE shall issue Work Authorizations and an Approved Funding Program to the Contractor for the current fiscal year.
- (e)
 - (1) DOE approved work programs, program performance expectations and milestones as appropriate, and budget estimates shall be reflected in Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs. These documents will be issued to the Contractor as soon as possible after funds become available. If, in preparing Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs, it is determined that changes are needed in the work program and budget estimates submitted by the Contractor, DOE and the Contractor shall agree upon the changes in the work before final issuance of these documents, provided, however, that nothing herein shall preclude DOE from directing a change in the work pursuant to the clause of the Contract entitled "Changes".

- (2) The Work Authorizations/Annual Program Letters, and with respect to work funded by the Office of Environmental Management, Program Baseline Summaries and Approved Funding Programs, specify the funds available for work under the Contract for the fiscal year and, in addition, may establish limitations on costs to be incurred for individual portions of the work. The Contractor shall comply with such limitations and shall promptly notify the Contracting Officer, in writing, whenever it becomes apparent that there is likely to be an overrun with respect to any specific limitation in the Work Authorization/Annual Program Letters, and with respect to the work funded by the Office of Environmental Management, Program Baseline Summaries, and Approved Funding Programs. Funds made available for work under the contract, and set forth in Approved Funding Programs or other funding documents, shall not be reduced except by written agreement of the Parties.
 - (3) Additional programs and projects to be conducted at the Laboratory within the scope of the Contract may be established by agreement between the DOE and the Contractor.
- (f) A Contract modification shall be issued to the Contractor on or before September 30 of each year (or such other date as may be agreed upon) to provide additional funds, and further Contract modifications may be issued or entered into from time to time to provide appropriate modifications in the total amount of funds made available under the Contract. DOE agrees to use its best efforts to provide stable funding in support of the Contract work and it is DOE's intention that there shall be so provided at all times sufficient funds to support the work program at the level authorized by DOE.
 - (g) During the course of the work, DOE shall review the work program and its costs based upon information submitted by the Contractor and may, after consultation with the Contractor, revise the Work Authorizations and Approved Funding Programs established by DOE under paragraph (e) above. The Contractor shall make any necessary revisions to the documents cited in this clause consistent with DOE direction.
 - (h) It is the intent of the Contractor and DOE to agree from time to time upon long-term work programs covering certain portions of the work to be performed under this contract.
 - (i) The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this Contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.

CLAUSE H.4 - DEFENSE AND INDEMNIFICATION OF EMPLOYEES

- (a) The Parties recognize that, under applicable State law, the Contractor could be required to defend and indemnify its officers and employees from and against civil actions and other claims which arise out of the performance of work under this Contract. Except for defense costs made unallowable by Section I clause entitled Payments and Advances, or the Major Fraud Act (41 U.S.C. §256(k)), the costs and expenses, including judgments, resulting from the defense and indemnification of employees from and against such civil actions and claims shall be allowable costs under this contract if incurred pursuant to the terms of Section I clause entitled "Insurance—Litigation and Claims".
- (b) Costs and expenses, including judgments, resulting from the defense and indemnification of employees from civil fraud actions filed in federal court by the Government will be unallowable where the employee pleads nolo contendere or the action results in a judgment against the defendant.
- (c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.
- (d) The Contractor shall immediately furnish the Contracting Officer written notice of any such claim or civil action filed against any employee of the Contractor arising out of the work under this contract together with copies of all pleadings filed. The Contractor shall furnish to the Contracting Officer a written determination by the Contractor's counsel that the defense or indemnity of the employee is required by the provisions of applicable State law, that the employee was acting within the course and scope of employment at the time of the acts or omissions which gave rise to the claim or civil action, and that any exclusions set forth under applicable State law for fraud, corruption, malice, willful misconduct, or lack of good faith on the part of the employee does not apply. A copy of any letter asserting a reservation of rights under applicable State law with respect to the defense or indemnification of such employee shall also be provided to the Contracting Officer. The costs associated with the settlement of any such claim or civil action shall not be treated as an allowable cost unless approved in writing by the Contracting Officer.

CLAUSE H.5 - ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS

Allowable costs under this Contract shall be determined according to the requirements of DEAR 970.5232-2, Payments and Advances. For purposes of effective Contract implementation, certain items of cost are being specifically identified below as allowable and/or unallowable under this Contract to the extent indicated:

I. ITEMS OF ALLOWABLE COSTS:

- (a) Cost for the defense and indemnification of employees in accordance with the provisions of Clause H.4.
- (b) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer as set forth in Part III, Attachment J.7, Appendix G.
- (c) Notwithstanding the provisions of FAR cost principle 31.205-44 (e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.
- (d) Notwithstanding the provisions of FAR cost principle 31.205-44 (e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.
- (e) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this contract.
- (f) Net cost of operating site lodging facilities attributable to performance of the contract.

II. ITEMS OF UNALLOWABLE COSTS:

- (a) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
- (b) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to in writing by the Contracting Officer.

The following costs are unallowable under the current contract and will continue to be unallowable if incurred by the selected Contractor:

- (c) Costs associated with ARTS at Argonne, the ANL Holiday Party, ANL picnics, Breakfast with Santa, tickets purchased for athletic or other special events or similar events unless specifically authorized by the Contracting Officer and not otherwise unallowable under the Contract.

III. OTHER MATTERS:

- (a) With respect to paragraph (e) of Clause I.13, Material Requirements, the Contracting Officer hereby authorizes the Contractor to purchase for projects not involving construction or maintenance used, reconditioned, or remanufactured supplies or unused former Government surplus property, when the Contractor determines that it is in the best interest of the Government.
- (b) With respect to paragraph (h)(3)(ii) of Clause I.135, Contractor Purchasing System, the term "site" means physically separate buildings, facilities, or structures. Therefore, the prohibition against the Laboratory awarding concurrent cost reimbursement and fixed price construction or architect-engineering subcontracts to the same firm for work at the same site is applicable to work within the same building, structure, or facility. However, in cases where a concurrent cost reimbursement and fixed price construction or architect-engineering subcontract is awarded to the same firm for work at different sites, an audit of subcontractor cost incurred must be performed.

CLAUSE H.6 – FACILITIES CAPITAL COST OF MONEY

The request for proposal for this contract did not require a cost proposal in which facilities capital cost of money would apply. Therefore, the Clause I.18, FAR 52.215-17, Waiver of Facilities Capital Cost of Money is included in the contract. However, if during the performance of the contract the Contractor elects to claim facilities capital cost of money as an allowable cost, the Contractor shall submit, for approval of the Contracting Officer, a proposal for each specific project, including Form CASB-CMF which shows the calculation of the proposed amount (see FAR 31.205-10).

CLAUSE H.7 - ADMINISTRATION OF SUBCONTRACTS

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.
- (b) The DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C "Description/Specifications/Work Statement" to be removed (de-scoped) from the contract in order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. The Contractor agrees to facilitate these actions. This facilitation will include identifying direct contracting opportunities valued at \$5 million or above for small businesses for work presently performed under subcontracts, as well as work performed by Contractor employees. The Contractor shall notify the DOE one year in advance of the expiration of any of its subcontracts valued at \$5 million or above, or if applicable, one year prior to the exercise of an option and/or the option notification requirement, if any, contained in the subcontracts. The DOE will review this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in the DOE electing to enter in contracts directly with small businesses for these areas of work. The Contracting Officer will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into contract for work being performed by Contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from the DOE for the administration of these contracts. The parameters of the Contractor's responsibilities for the small business contracts and/or changes, if any, to this contract will be incorporated via a modification to the contract. The Contractor will accept management and administration responsibilities, if so determined.
- (d) To the extent that DOE removes (de-scopes) work from this contract, any such removed or withdrawn work shall be treated as a change in accordance with the clause of this contract entitled, "Changes". A "material change" for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the Laboratory's budget. To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment

in the Contractor's annual available performance fee. The negotiation of fee will be in accordance with the contract clause entitled, "Total Available Base Fee Amount and Performance Fee Award". The Parties will also negotiate appropriate adjustments to the Contractor's Subcontracting Plan or any other applicable contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor's subcontracting base and goals.

- (e) DOE has identified Physical Site Security work for either direct federal contract with small business or assignment of the follow-on subcontract to DOE. These services are currently provided to Argonne National Laboratory under a subcontract. When the current subcontract expires the work will either be awarded by direct contract by DOE or through a subcontract issued by the Contractor and then assigned to DOE. For this work and for any other work which is removed by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required. In addition, to the extent that the Scope of Work has to be modified to reflect removal of work, a modification will be issued when the federal contract is awarded or at the time of assignment of the Subcontract to DOE.

CLAUSE H.8 - CARE OF LABORATORY ANIMALS

- (a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended. The Contractor shall furnish evidence of such registration to the Contracting Officer.
- (b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in paragraph (a) above.
- (c) In the care of any animals used or intended for use in the performance of this contract, the Contractor shall comply with USDA regulations governing animal care and usage, as well as all other relevant local, State, and Federal regulations concerning animal care and usage. In addition, the Contractor will ensure that research will be conducted in a facility that either: (i) has a current National Institutes of Health (NIH) assurance number for animal care and usage, or (ii) is currently accredited for animal care and usage by an appropriate organization such as the Association for Assessment and Accreditation of Laboratory Animal Care (AAALAC) International, or (iii) has a DOE Assurance Plan Number.

CLAUSE H.9 - PRIVACY ACT RECORDS

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579) and implementing DOE Regulations (10 CFR 1008), the Contractor shall maintain the following "Systems of Records" on individuals in order to accomplish the United States Department of Energy functions:

- Personnel Medical Records (DOE-33) (excepting Contractor employees)
- Personnel Radiation Exposure Records (DOE-35)
- Employee and Visitor Access Control Records (DOE-51)
- Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites (DOE-52)

The parenthetical Department of Energy number designations for each system of records refers to the official "System of Records" number published by the United States Department of Energy in the Federal Register pursuant to the Privacy Act.

If DOE requires the Contractor to design, develop, or maintain additional systems of Government-owned records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974 and 10 CFR 1008, the Contracting Officer, or designee, shall so notify the Contractor, in writing, and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The Parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

CLAUSE H.10 - ADDITIONAL DEFINITIONS

- (a) "CH" means the DOE Office of Science, Chicago Office.
- (b) "Contractor" means the Offeror as specified in Block 15A of Standard Form 33 for Contract No. DE-AC02-06CH11357.
- (c) The term "DOE" means the Department of Energy, "FERC" means the Federal Energy Regulatory Commission, and "NNSA" means the National Nuclear Security Administration.
- (d) The term "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the

purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.

- (e) "Head of Agency" means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.
- (f) "Laboratory" means the Argonne National Laboratory (ANL) composed of Government-owned buildings and facilities together with the necessary utilities, now existing or hereafter to be acquired, constructed and equipped, most of which are or will be situated on the Government-owned land (hereinafter referred to as the "Laboratory Site") at Argonne, DuPage County, Illinois.
- (g) The term "someone acting as the Laboratory Director" means the person appointed as Laboratory Director; Deputy Laboratory Director(s) acting in the absence of the Laboratory Director; or a person specified, in writing, to have authority to act in the absence of the Laboratory Director and Deputy Laboratory Director(s).
- (h) With respect to Clauses H.16, I.118, and I.136, the term "non-profit organization" means –
 - (1) a university or other institution of higher education,
 - (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,
 - (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
 - (4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.
- (i) The term "Senior Procurement Executive" means, for DOE:

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

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

Federal Energy Regulatory Commission – Chairman, FERC.

CLAUSE H.11 - SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

The Service Contract Act of 1965 is not applicable to this contract. However, in accordance with Clause I.135 – DEAR 970.5244-1 – CONTRACTOR PURCHASING SYSTEM (MAY 2006) (includes modifications in final rule dated 3/31/06) (Deviation), subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Act, the Contractor shall prepare SF-98 and 98A “Notice of Intention to Make a Service Contract” and forward it to the Contracting Officer or his designee to obtain a wage determination.

CLAUSE H.12 - WALSH-HEALY PUBLIC CONTRACTS ACT

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000.00 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

CLAUSE H.13 - PROTECTION OF HUMAN SUBJECTS

Before undertaking the performance of any research involving the use of human subjects, the provisions of 10 CFR 745, Protection of Human Subjects, must be complied with. This requirement applies to research undertaken with DOE support, work for others, and collaborations with other institutions.

CLAUSE H.14 – BOARD OF GOVERNOR’S EXPENSES

The allowable costs reimbursed under Clause I.124, Payments and Advances, of this contract shall include costs incurred by the Board of Governors and shall be determined as follows:

Commencing October 1, 2006 the Contractor shall be provided funds each fiscal year to reimburse the allowable costs (which may include such types as staff costs, honoraria

and meeting expenses) resulting from the activities of the Board of Governors. At least 60 days before the beginning of the fiscal year, the Contractor shall submit to the Contracting Officer a detailed budget for the allowable costs of such activities for the ensuing year. The amount each year shall be a provisional amount agreed upon by the Parties after review of the annual budget. During each year the Parties may agree upon changes regarding the approved annual budget. Any costs incurred by the Contractor for the Board of Governors in excess of the mutually agreed to provisional amount shall be unallowable unless the Contracting Officer approves such increased amount, in writing. The Contractor shall submit a detailed report of all expenditures as soon as possible but no later than 120 days following the end of each fiscal year. Any amounts received provisionally for the completed year and not so spent shall be refunded to the DOE, or, if the Parties so agree, carried forward as an offset against the provisional allowable costs for the succeeding fiscal year. A certification signed by an individual of the UChicago Argonne LLC, at a level no lower than a Vice President or Chief Financial Officer, shall be provided stating that the costs incurred contain no unallowable costs. Appropriate documentation, including a detailed agenda, list of attendees, topics of discussion, and a Statement indicating that meals provided to the Board of Governors are incidental to and an integral part of the conference or meeting, shall be available to DOE and provided in the annual detailed report of expenditures. The provisional sum provided for the Board of Governors' reimbursement for allowable costs shall be paid in advance on a prorated monthly basis at the rate of 85%.

CLAUSE H.15 - STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION

- (a) Use of objective standards of performance, self assessment and performance evaluation:
- (1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of performance goals, objectives, measures, and targets, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the scientific and technical mission obligations under this Contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management of the Laboratory.
 - (2) The Parties agree to utilize the process described within Part III, Section J, Appendix B - "Performance Evaluation and Measurement Plan" (PEMP) to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Appendix B will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has

the unilateral right to establish the evaluation process.

- (3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the Contract Statement of Work and performance indicators identified within Part III, Section J, Appendix B. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.
- (4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Appendix B. The Contractor shall provide a formal status briefing at mid-year and year-end, and a formal self-evaluation report to the DOE at year-end. Specific due dates and formats for the above-mentioned briefings and reports shall be agreed to by the Laboratory Director and the DOE Argonne Site Office Manager. In addition, the year-end report must provide:
 - (i) an overall summary of performance for the performance period;
 - (ii) performance ratings for each PEMP element and the Laboratory overall; and
 - (iii) a summary of key strengths and opportunities for improvement.
- (5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract. The Office of Science, through the DOE Argonne Site Office Manager, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.
- (6) The Contracting Officer shall annually provide a written assessment of the Laboratory's performance to the Contractor, which shall be based upon the process described in Appendix B. The Parties acknowledge that the performance levels achieved against the specific performance goals, objectives, measures, and targets shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider

other relevant information not specifically measured by the objectives and measures established within Appendix B that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., OIG, GAO, DCAA, etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may be rewarded with less frequent – or no – review of the functional area. Conversely, marginal performance or "for cause" situations may result in more frequent reviews.

(b) Standards of performance measure review:

- (1) The Parties agree to review the PEMP elements (goals, objectives, measures, and targets, and expected levels of performance) contained in Appendix B annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, measures, and targets, for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, measures, and targets and/or to modify and/or delete existing goals, objectives, measures, and targets. It is expected that the goals, objectives, measures, and targets will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.
- (2) Failure to include a goal, objective, measure, or target in the contract Appendix B does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.
- (3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision ten days prior to issuance.

CLAUSE H.16 SHALL APPLY IF THE SELECTED OFFEROR IS A NON-PROFIT ORGANIZATION

CLAUSE H.16 - CAP ON LIABILITY

- (a) The Parties have agreed that the Contractor's liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b)

below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following clauses:

- (1) The clause titled "Property", paragraph (f)(1)(i)(C);
 - (2) The clause titled "Insurance--Litigation and Claims", (h), with respect to prudent business judgment only; and
 - (3) The clause titled "Insurance--Litigation and Claims", (j)(2), except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in the clause titled, Property.
- (b) The Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual cap which will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor's act or failure to act overlaps more than one fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

CLAUSE H.17 - INTELLECTUAL AND SCIENTIFIC FREEDOM

- (a) The Parties recognize the importance of fostering an atmosphere at the Laboratory conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to important national interests.
- (b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratory and colleagues at universities, colleges, and other laboratories or scientific facilities is vital to the success of the scientific, engineering, and technical work performed by Laboratory personnel.
- (c) In order to further the goals of the Laboratory and the national interest, it is agreed by the Parties that the scientific and engineering personnel at the Laboratory shall be accorded the rights of publication or other dissemination of research, and participation in open debate and in scientific, educational, or professional meetings or conferences, subject to the limitations included in technology transfer agreements and such other limitations as may be required by the terms of this Contract, including, but not limited to the clause of this Contract entitled, "Security." Nothing in this clause is intended to alter the obligations of the Parties to protect classified or unclassified controlled nuclear information as

provided by law.

- (d) Nothing in the Section I clause entitled "Public Affairs" or the Section H clause respecting "Lobbying Restriction" are intended to limit the rights of the Contractor or its employees to publicize and to accurately state the results of its scientific research.

CLAUSE H.18 - NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

CLAUSE H.19 - APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS

- (a) Performance. The Contractor will perform the work of this Contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this contract as "Appendix I, List B" until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.
- (b) Laws and Regulations Excepted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.
- (c) Deviation Processes in Existing Orders. This clause does not preclude the use of deviation processes provided for in existing DOE directives.
- (d) Proposal of Alternative. The Laboratory Director may, at any time during performance of this contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed CRD by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized by the Contractor in performance under the contract, and a schedule for implementation of the alternate. In addition, the Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor's proposal.

- (e) Action of the Contracting Officer. The Contracting Officer shall within sixty (60) days:
- (1) deny application of the proposed alternative;
 - (2) approve the proposed alternative, with conditions or revisions;
 - (3) approve the proposed alternative; or
 - (4) provide a date by which a decision will be made (not to exceed an additional 60 days).
- (f) Implementation and Evaluation of Performance. Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Additionally, the statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. DOE will evaluate performance of the approved alternative from the date scheduled by the Contractor for implementation.
- (g) Application of Additional or Modified CRDs. During performance of the contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not then listed in Appendix I or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within thirty (30) calendar days, may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted by the Contractor within the thirty (30) calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Appendix I. 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, resulting from the addition of the CRD or modification.
- (h) Deficiency and Remedial Action. If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, in his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's

approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the CRD.

CLAUSE H.20 - EXTERNAL REGULATION

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of Laboratory facilities, whether by the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, and/or State and local entities with regulatory oversight authority, and including but not limited to the conduct of pilot programs simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

CLAUSE H.21 – SEPARATE CORPORATE ENTITY AND PERFORMANCE GUARANTEE

- (a) The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent organization(s). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.
- (b) The Contractor's parent organization(s) or all member organizations, shall guarantee the Contractor's performance as evidenced by the Performance Guarantee(s) incorporated in the contract in Section J, Appendix L. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the contract.
- (c) In the event any of the signatories to the performance guarantee enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

CLAUSE H.21A – RESPONSIBLE CORPORATE OFFICIAL

The Government may contact as necessary, the Chairman of the Parent Organization(s)' Board of Directors, Trustees or any other Management Board regarding Contractor performance issues.

For each such official, the Contractor shall provide the following information:

Name: James S. Crown
Position: Chairman of the Board of Trustees
Organization: The University of Chicago
Address: 5801 South Ellis Ave, Adm. 501, Chicago, IL 60637
Phone Number: 773-702-8808

Should a responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government, in writing, of the change in the individual(s) to contact.

CLAUSE H.22 - WORKFORCE TRANSITION, CONTRACTOR COMPENSATION, BENEFITS AND PENSION

- (a) (1) Subject to the availability of funds, the Contractor shall offer employment to all Incumbent employees who, as of the date of contract award, are in good standing and have "Regular" appointments, as defined in subparagraph (2) below, except as set forth in (i) and (ii), below.
- (i) It is the Contractor's prerogative to establish its own management structure, therefore, the Contractor is not required to offer employment to those "Regular" employees permanently assigned to the positions listed under Section L as Appendix 7, List A. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion.
- (ii) For those positions listed under Section L, Appendix 7, Lists A and B, any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.

Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

- (2) Regular appointments, for purposes of this clause, are of an indefinite duration, with either a full-time work schedule of at least 40 hours per week, or a part-time work schedule of fewer than 40 hours per week. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program. Employees scheduled to work fewer than 20 hours per week receive only those benefits required by law.
- (b) Employee Pay and Benefits:

- (1) Incumbent employees are the employees who are on the regular payroll(s) of the Incumbent Contractor(s) at the time that the responsibility for contract performance is assumed by the successor contractor.
- (2) Non-incumbent employees are new hires, i.e., employees hired by the Contractor after the Contractor assumes responsibility for contract performance
- (3) Except as provided in (a)(1) above, the Contractor shall provide equivalent pay and comparable benefits to incumbent employees for at least the first year of the contract. Thereafter, benefits shall be altered, as necessary, to achieve conformance with DOE policy. Incumbent employees shall remain in their existing pension plans pursuant to pension plan eligibility requirements and applicable law. 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. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.
- (4) The Contractor shall become plan sponsor of pension and other post-retirement benefit (PRB) plans, as applicable, for those individuals who retired from employment at ANL with the predecessor contractor prior to contract award. The Contractor shall provide benefits comparable to those provided by the predecessor contractor for at least the first year of the contract. Thereafter, benefits shall be altered, as necessary, to achieve conformance with DOE policy. Unless required by Federal or State law, advance funding of PRBs, other than pensions, is not allowable.
- (5) All new (non-incumbent) employees shall receive an overall benefit package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees. Contractors shall develop and implement welfare benefit programs that meet the test of allowability established by FAR 31.205-6 as supplemented by DEAR 970.3102-5-6.
- (6) Cost reimbursement for pension and other benefit programs sponsored by the Contractor will be based on Contracting Officer approval of contractor actions pursuant to an approved "Employee Benefits Value Study" and an Employee Benefits Cost Survey Comparison." No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changes benefit plans.

- (7) The Contractor shall submit within 30 days of Contract award, a *Human Resources Compensation Plan* demonstrating how the Contractor will comply with the requirements of this contract. The *Human Resources Compensation Plan* shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.
- (8) The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with FAR 31.205-6, and DEAR 970.3102-05-6, "Compensation for Personal Services," as applied to the DOE-approved standards in Section J, Appendix A. The Contractor's compensation system and methods shall be in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, fully documented, consistently applied, and acceptable to DOE.

Until DOE has certified the Contractor's compensation system, the Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the contract:

- (i) Any additional Compensation System self-assessment data requested by the Contracting Officer that may be needed to validate and approve the Compensation System.
- (ii) Any proposed major compensation program design changes prior to implementation.
- (iii) Annual Compensation Increase Plan (CIP).
- (iv) Individual compensation actions for the Key Personnel including initial and proposed changes to base salary and or payments under an Executive Incentive Compensation Plan.
- (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).

Upon certification of the Contractor's Compensation System, Contracting Officer approval of individual compensation actions will be required only for the Laboratory Director, Deputy Director(s), if any, and those other first-tier reports to the aforementioned positions, as identified by the Contracting Officer.

- (9) Severance pay benefits are 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 at a DOE facility for which severance pay has been previously paid.

- (10) The Contractor shall provide the Contracting Officer with the following reports with respect to salary and benefits:
 - (i) 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.
 - (ii) At the time of contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.
 - (iii) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.
 - (iv) A Self-Assessment of the total compensation program to include an evaluation of total benefits using the relative Benefit Value measure every two years, and an annual Per Capita Cost Comparison analysis.
- (11) DOE will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals when approved by the Contracting Officer will be conducted by either DOE validation of Contractor self-assessments of compensation system performance, or third party expert review.
- (c) Pension and Other Benefit Programs: Unless stated otherwise, or as directed by the Contracting Officer, within 30 days of award or extension, and prior to implementation of any benefit change, the Contractor shall submit (1) and (2) below:

- (1) An Employee Benefits Value Study (ben-val) Measure, every two years, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does 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 for nationally recognized and Contracting Officer approved survey sources and,
- (2) An Employee Benefits Cost Comparison Analysis, annually, that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.

This information shall be submitted to the Contracting Officer in advance for approval of application of the changes under the contract and for a determination as to whether the costs incurred are consistent with the Contractor's documented program plan and are deemed allowable pursuant to FAR 31.205-6 as supplemented by DEAR 970.3102-05-6.

- (3) When net benefit value and/or per capita cost of the total benefits package exceed the comparator group by more than 5 percent, submit a corrective action plan, when requested by the Contracting Officer.
 - (4) As required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range.
 - (5) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the net benefit value and per capita cost range within two years.
 - (6) Submit the Report on Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 15 of the current calendar year.
- (d) Pension plans: The Contractor shall establish or maintain a separate pension plan(s), distinct from any corporate or other pension plan, meeting the requirements of the IRC and ERISA, that recognizes service credit earned at ANL.

- (1) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with law and regulation.
- (2) Each pension plan shall cover only Contractor employees working for ANL and shall stand alone as a separate pension plan distinct from a Contractor's corporate or other pension plan.
- (3) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the Contracting Officer with the following within nine months of the last day of the current pension plan year.
 - (i) Copies of IRS forms 5500 with schedules;
 - (ii) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
- (4) The Contractor shall submit the information required under (i) and (ii), below, as applicable, prior to the adoption of any changes to the pension plan, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.
 - (i) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value must be provided; and,
 - (ii) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
- (5) At contract expiration or termination as a part of the transition to another entity awarded the management and operating contract, the Contractor shall transfer sponsorship of the site-specific pension plan(s) covering employees at ANL, as directed by DOE.

- (6) Pension Plan Terminations. The Contractor shall not terminate any pension plan (commingled or site-specific) without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.
 - (7) Post-Contract Responsibilities for Benefits Other Than Pensions if this contract expires or terminates with a follow-on contract. The Contractor shall transfer sponsorship of the post-retirement benefit plan(s) (retiree medical and life insurance) covering employees at ANL, as directed by DOE.
 - (8) Post-Contract Responsibilities for Pension and Benefit Plans if this contract expires or terminates without a follow-on contract. Notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, including but not limited to the clause of the contract Section I clause, FAR 52.249-6, "Termination," the following actions shall occur:
 - (i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.
 - (ii) During the final 12 months of this contract, if the parties have not reached agreement on these matters, the Contracting Officer shall provide written direction regarding the provision of post-contract pension and welfare benefits.
 - (iii) Notwithstanding termination for convenience or default, the contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer, including, but not limited to, obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.
- (e) Labor Relations:
- (1) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
 - (2) The Contractor shall meet with the Contracting Officer or designee(s) for

the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.

CLAUSE H.23 - CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

- (a) The Contractor shall accept, in its own name, service of notices of violations 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 the other provisions of this contract.
- (b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

CLAUSE H.24 - ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

- (a) The Parties commit to full cooperation with regard to acquiring any necessary permits or licenses required by environmental, safety and health (ES&H) laws, codes, ordinances, and regulations of the United States, states or territories, municipalities or other political subdivisions, and which are applicable to the performance of work under this contract. It is recognized that certain ES&H permits will be obtained jointly as co-permittees, and other permits will be obtained by either party as the sole permittee. The Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.
- (b) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "Parties", for implementing the environmental requirements at facilities within the scope of the contract. In this Clause, the term "environmental requirements" means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, compliance agreements, permits, and licenses.

- (c) (i) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty. The allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this contract.
- (ii) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the contract.
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this contract, and the Contractor has been directed by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

CLAUSE H.25 - WORKERS' COMPENSATION

- (a) The Contractor will maintain workers compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the Contracting Officer and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.

- (b) The Contractor shall obtain a service-type insurance policy that endorses the Department of Energy Incurred Loss Retrospective Rating Insurance Plan unless a different arrangement is approved by the Contracting Officer.
- (c) The Contractor shall submit to the Contracting Officer an annual evaluation and analysis of workers' compensation cost as a percent of payroll in comparison with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the Contracting Officer. The Contractor's self evaluation shall discuss:
 - (1) periodic audits of claims servicing units; and,
 - (2) the reasonableness of insurance reserves and methods and assumptions used to closeout claims or losses to present value.
- (d) The Contractor, if it is a state institution covered under a corporate workers' compensation arrangement, shall provide the Contracting Officer with a copy of account statements including deposits, earnings, payments, losses, and administrative fees by the Contractor's financial institution on no less than an annual basis.
- (e) The Contractor will obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and will furnish reports as may be required from time to time by the Contracting Officer.

CLAUSE H.26 - ADDITIONAL LABOR REQUIREMENTS

The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by DOE on all Davis Bacon activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Contractor shall report them to the DOE Contracting Officer. The Contracting Officer may require that the Contractor assist in the determination of the amount of restitution and withholding of funds from a subcontractor so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.

The Contractor shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Contractor shall assist DOE and or/the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semi-Annual Enforcement Report to DOE by April 21 and October 21 each year.

CLAUSE H.27 - OPEN COMPETITION AND LABOR RELATIONS UNDER
MANAGEMENT AND OPERATING AND OTHER MAJOR
FACILITIES CONTRACTS

“Labor organization,” as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).

- (a) Unless acting in the capacity of a constructor on a particular project, the Contractor shall not-
 - (1) Require bidders, offerors, other contractors, or subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, i.e., project labor agreements, that apply to construction project(s) relating to this contract; or,
 - (2) Otherwise discriminate against bidders, offerors, Contractors, or subcontractors for refusing to become or to remain signatories or to otherwise adhere to project labor agreements for construction project(s) relating to this contract.
- (b) When the Contractor is acting in the capacity of a constructor, i.e., performing a substantial portion of the construction with its own forces, it may use its discretion to require bidders, offerors, other contractors, or subcontractors to enter into a project labor agreement that the Contractor has negotiated for that individual project.
- (c) Nothing in this clause shall limit the right of bidders, offerors, other contractors, or subcontractors to voluntarily enter into project labor agreements.

CLAUSE H.28 - PERFORMANCE BASED MANAGEMENT AND OVERSIGHT

- (a) Performance-based management shall be the key enabling mechanism for establishing the DOE-Contractor expectations on oversight and accountability. DOE expectations (outside of individual program performance and requirements of laws and regulations) and performance targets shall be established through the Performance Evaluation and Measurement Plan (PEMP) pursuant to the clause entitled “Standards of Contractor Performance Evaluation”. This PEMP shall establish the expected strategic results in the areas of mission accomplishment, stewardship and operational excellence. Mission performance goals shall be established by agreement with each major customer of the Laboratory, and customer evaluation will be the primary means of evaluating

mission performance. Stewardship and operational goals shall be established by agreement with DOE. Contractor self-assessment, third party certification, and Contractor and DOE independent oversight, as appropriate, shall be the primary means for assessing stewardship and operational performance. Routine DOE oversight of Contractor performance will be conducted at the systems level.

- (b) The performance-based management system shall be the primary vehicle for addressing issues associated with performance expectations. In the event of a substantive performance shortfall in any area, the appropriate improvement expectations and targets will be incorporated into the PEMP and tracked through self-assessment and independent oversight, as appropriate.
- (c) Compliance with applicable Federal, State and local laws and regulations, and permits and licenses, shall be primarily determined by the cognizant regulatory agency and DOE will primarily rely upon the determination of the external regulators in assessing Contract compliance. DOE oversight will be achieved through periodic assessments at the management system level, including review of Contractor self-assessments and assessments by independent third parties.

CLAUSE H.29 - LOBBYING RESTRICTION (ENERGY AND WATER ACT, 2006)

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

CLAUSE H.30 – ELECTRONIC SUBCONTRACTING REPORTING SYSTEM

The requirement for the submittal of paper versions of the Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports, as provided in FAR 52.219-9(j) is hereby deleted and is replaced with the electronic submittal of data under the Electronic Subcontract Reporting System (eSRS).

The contractor's subcontracting plan shall include assurances that the offeror will (1) submit the Individual Subcontracting Reports and Summary Subcontracting Reports under the eSRS and (2) ensure that its subcontractors agree to submit Individual Subcontracting Reports and Summary Subcontracting Reports at all tiers, in eSRS.

The contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702.

CLAUSE H.31 – DOE MENTOR-PROTÉGÉ PROGRAM

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall Mentor at least one active Protégé company at all times during the performance on this contract. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract.

CLAUSE H.32 – DISPOSAL OF REAL PROPERTY

Disposal of any permanent or temporary interest in real property shall require the prior approval of the Contracting Officer.

CLAUSE H.33 – ACTIVITIES DURING CONTRACT TRANSITION

- (a) The Contractor will commence Transition Activities as soon as possible after the award of the contract and complete the following activities (to the extent identified in the Contractor’s proposal) within two months, after contract award, except as otherwise authorized by the Contracting Officer. It is currently estimated that Transition Activities will be completed by September 30, 2006. After completion of these activities, and such other Transition Activities as may be authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for the Laboratory. Upon receipt of written notification from the Contracting Officer that the Transition Activities are considered complete, the Contractor shall assume full responsibility for the Laboratory, effective 12:01 A.M., the next day.
- (1) Scientific Research. Complete the activities that will allow the Contractor to assume control of ANL’s scientific programs and facilities.
 - (2) Management Systems. Analyze and initiate enhancements, if needed, to the existing management systems (e.g., Integrated Safety Management, Integrated Safeguards and Security Management, Finance, Property, Procurement, Information Management, Life Cycle Asset Management, Human Resources) to assure system adequacy.
 - (3) Assignment of Existing Agreements. Initiate and complete the planning to assume the responsibility for existing regulatory (e.g., environmental

permits) and commercial agreements (e.g., subcontracts, purchase orders, leases, etc.) to be assigned to the Contractor by the University of Chicago, or otherwise taken over by Contractor. Initiate the assumption of said responsibility with the objective of being eighty-five percent (85%) complete by the end of the transition period.

- (4) Joint Reconciliation Property Inventory. Initiate and complete the planning for a joint reconciliation property inventory with the University of Chicago, see Clauses I.136(i)(2)(ii) or I.137(i)(2)(ii), in accordance with overall guidance provided by the Contracting Officer.
- (5) Litigation Management. Contractor shall consult with the University of Chicago and DOE to determine whether Contractor should assume some level of management of any litigation resulting from laboratory operations predating the effective date of this contract. The decision should be based on consideration of cost efficiency, named parties, relevance of retrospective insurance, and DOE litigation management guidelines.
- (6) Human Resources
 - (a) The Contractor will transition the workforce without break in service as operations cease under Contract W-31-109-ENG-38.
 - (b) The Contractor will conduct work force planning, documented in the form of a plan, to be submitted to the Contracting Officer for review and approval at the end of the Transition Period. The Plan will identify the status of critical-skills and the strategy for the recruitment and/or retention of those skills, and specifically address the issues set forth below.
 - (i) If the Contractor intends to utilize "Joint Appointees" with the University of Chicago and/or any other educational institutions; how said "Joint Appointees" will be utilized; terms to be utilized; and a description of the reimbursement process to be negotiated with the University of Chicago and/or other educational institutions.
 - (ii) Incentive compensation strategy for "Key Personnel," other management personnel, and other employees, as appropriate, that meets the criteria of the DOE Acquisition Guide, Chapter 70.5, which can be located on the internet at <http://rfpanl.sc.doe.gov/>.
 - (iii) The terms and conditions of employment that will be applicable to the bargaining unit workforce, demonstrating

consistency with the respective collective bargaining agreements previously providing coverage.

- (iv) RESERVED
- (v) The following will be specifically addressed under the *Human Resources Compensation Plan*, required to be submitted within 30 days of Contract award, pursuant to H.22(b)(7):
 - (A) The framework for the pension and health/welfare benefits applicable to the transferring workforce, with an assessment of the benefit value relative to those provided by the University of Chicago for ANL employees.
 - (B) A framework of the total compensation package applicable to new hires under the contract.
- (b) Except as provided in paragraph (c) below, or as otherwise specifically agreed to by the Contractor and the Contracting Officer, all of the provisions of this contract shall apply to the Contractor's performance of Transition Activities.
- (c) The following contract articles or portions thereof as noted below do not apply to the Contractor's Transition Activities:
 - (1) Clause C.4 - Statement of Work;
 - (2) Clause F.1 - Period of Performance, except that pertaining to the Transition Period;
 - (3) Clause H.1 - Laboratory Facilities;
 - (4) Clause H.2 - Long-Range Planning, Program Development and Budgetary Administration;
 - (5) Clause H.8 - Care of Laboratory Animals;
 - (6) Clause H.13 - Protection of Human Subjects;
 - (7) Clause H.15 - Standards of Contractor Performance Evaluation;
 - (8) Clause H.16 - Cap on Liability;

- (9) Clause H.23 - Contractor Acceptance of Notices of Violations or Alleged Violations, Fines, and Penalties;
 - (10) Clause H.24 - Allocation of Responsibilities for Contractor Environmental Compliance Activities;
 - (11) Clause I.11 - Required Sources for Helium and Helium Usage Data;
 - (12) Clause I.100 - Total Available Fee: Base Fee Amount and Performance Fee Amount;
 - (13) Clause I.101 - Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts;
 - (14) Clause I.102 - Work For Others Program (Non-DOE Funded Work);
 - (15) Clause I.122 - Preexisting Conditions;
 - (16) Clause I.128 - Work for Others Funding Authorization; and
 - (17) Appendix B - Performance Evaluation and Measurement Plan.
- (d) Contractor agrees to perform the activities set forth in paragraph (a) above, including relocation of Contractor's "Key Personnel," as described in its Cost Proposal, at an allowable cost not to exceed \$1,238,501. In the event the actual cost of said activities exceeds such amount, including any costs for relocation of Contractor's "Key Personnel" incurred after the conclusion of the transition period, Contractor agrees that it will be solely responsible for costs greater than said amount.

CLAUSE H.34 – SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

- (a) DOE shall make arrangements to execute a Special Financial Institution Account Agreement which will be effective through January 31, 2007, and will be provided to the Contractor for its execution.
- (b) Contractor agrees to procure, in accordance with DOE requirements, a Special Financial Institution Account Agreement in sufficient time to have said Agreement in place and effective as of February 1, 2007.

CLAUSE H.35 – AGREEMENTS AND COMMITMENTS

- (a) The resources proposed by the Contractor and accepted by the Government are incorporated into the contract as set forth below:

The contractor has committed to provide \$15,484,110 in financial obligations in the performance of this Contract. This amount is exclusive of 1) Jacobs Engineering Business Systems Reviews, in excess of one and 2) the University of Chicago's Executive Education Program. Details of the commitments are set forth in Section J.4, Appendix D – Contractor Commitments.

The Contractor shall provide the above described resources in the amount, manner, and schedule as specified in Contractor's response to Provision L.8 of RFP No. DE-RP02-06CH11357. If the Contractor fails to provide any or all of these resources or to make progress toward providing these resources, the Government may exercise any of its rights and remedies under the contract, including those contained in the provision of the Section I clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts."

- (b) Any costs incurred by the Contractor in providing any of these resources are expressly unallowable under the contract.

CLAUSE H.36 – MODIFICATION AUTHORITY

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

- (a) Accept nonconforming work,
- (b) Waive any requirement of this contract, or
- (c) Modify any term or condition of this contract.

CLAUSE H.37 – COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that: (1) all deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product management available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor agrees to: (1) obtain the Contracting Officer's approval before

starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008; and (3) have IPv6 technical support for development and implementation and fielded product management available.

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

**CLAUSE H.38 – ENVIRONMENTALLY PREFERABLE PURCHASING FOR
DESKTOP OR LAPTOP COMPUTERS OR MONITORS
(DOE-AL 2007-08)**

When the contract requires the specification or delivery of desktop or laptop computers or monitors in a DOE facility, the Contractor will specify or deliver Electronic Product Environmental Acquisition Tool (EPEAT) registered products conforming to the IEEE 1680-2006 Standard, provided such products are available, are life cycle cost effective, and meet applicable performance requirements. Information on EPEAT-registered computer products is available at www.epeat.net.

**CLAUSE H.39 – IMPLEMENTATION OF ITER AGREEMENT ANNEX ON
INFORMATION AND INTELLECTUAL PROPERTY**

- (1) Contractor agrees to be subject to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the ITER Agreement). Specifically, and without limitation, subject inventions and data produced in the performance of this contract under the ITER project, and subcontracts entered thereunder are subject to the license rights and other obligations provided for in the ITER Agreement's Annex on Information and Intellectual Property (the Annex) attached as Attachment J.14, Appendix N of this contract.
- (2) Background intellectual property of the Contractor, as defined in the Annex, is also subject to the provisions of the ITER Agreement. In particular and under certain circumstances, Contractor shall use its best efforts to identify Background Intellectual Property (including patents and data) and grant a nonexclusive license in certain Background Intellectual Property to the Parties to the ITER Agreement (Members) for commercial fusion use. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE.
- (3) Further, in accordance with the Annex, intellectual property generated by Contractor employees who are designated as seconded staff to the ITER

organization shall be owned by the ITER Organization and the Contractor gets no rights to such intellectual property except those rights provided the Contractor by the Government as a result of the Government being a member of the ITER Organization. Contractor agrees that Contractor employee agreements will be suitably modified as necessary to effectuate this provision and that employees will be required to execute a separate second agreement with the ITER Organization.

- (4) The Government may provide to each ITER Member, as defined in the ITER Agreement, the right, for non-commercial uses, to translate, reproduce, and publicly distribute data produced in the performance of this contract under the ITER project. Contractor will deliver, at a minimum, to DOE, copies of all ITER-generated peer-reviewed manuscripts provided to scientific and technical journal publishers which may then be distributed to Members in accordance with the ITER Agreement. Contractor agrees that the ITER Organization may impose a different delivery requirement in order to be in compliance with this paragraph and that, if so, Contractor agrees that this paragraph may be suitably modified to be in accordance with the ITER Agreement.
- (5) Contractor shall include the ITER patent and data rights clauses transmitted to the Contractor from the U.S. ITER Project Office, suitably modified to identify the parties, in all ITER subcontracts, at any tier, for experimental, developmental, demonstration or research work and in subcontracts in which technical data or computer software is expected to be produced or in subcontracts that contain a requirement for production or delivery of data.

CLAUSE H.40 – INFORMATION TECHNOLOGY ACQUISITIONS

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov> commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory CIO shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions.

CLAUSE H.41 – SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (FEB 2009)

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5,

(Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

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

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

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

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

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

Definitions:

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

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or

local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

Contractors must include this clause in every subcontract.

B. Segregation and Payment of Costs

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

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

C. Prohibition on Use of Funds

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

D. Wage Rates

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

E. Publication

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

F. Registration requirements

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

G. Utilization of Small Business

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

Note: The following paragraphs, H, I, and J, are in effect until the FAR is modified to implement these provisions of the Recovery Act. The Contractor agrees that the Contracting Officer may unilaterally modify the contract to incorporate the FAR clauses that implement the Recovery Act. The following paragraphs will no longer be valid and the contract will be considered modified to add the new FAR provisions and clauses in Section I.

H. American Recovery and Reinvestment Act-Reporting Requirements

(a) Definitions. As used in this clause -

"First-tier Subcontract" means a subcontract awarded directly by a Federal government prime contractor funded by the Recovery Act.

"Jobs Created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as "full-time equivalent" which shall include full-time, part-time, temporary, permanent, positions as expressed as a "person-year," consistent with the contractor's existing personnel procedures. This includes positions at the prime level, and the prime contractor's estimate of positions at the first subcontract tier.

"Jobs retained" means an estimate of those previously existing unfilled positions that are filled as a result of funding by the American Recovery and Reinvestment Act

(ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as “full-time equivalent” which shall include full-time, part-time, temporary, permanent, positions as expressed as a “person-year,” consistent with the contractor’s existing personnel procedures. This includes positions at the prime level, and the prime contractor’s estimate of positions at the first subcontract tier.

“Total Compensation” means the complete pay package of contractor employees, including all forms of money, benefits, services, and in-kind payments, consistent with the regulations of the Securities and Exchanges Commission at 17 CCR 229.402.

- (b) This contract requires products and/or services which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor that receives contracts from a Federal agency under the Recovery Act to report on use of funds.
- (c) Reporting starts with the later of the first calendar quarter in which the contractor invoices the Government for work funded by Recovery funds, or the second calendar quarter of 2009. Reporting is required not later than 10 days after the end of each calendar quarter. The Contractor shall report the following information, using the online reporting tool available at TBD. If the tool is not available when the contractor’s report is due, the contractor shall maintain the data necessary to report for that quarter when the tool becomes available or submit the report in hard or soft copy if required by the Contracting Officer.
 - (1) the amount of recovery funds invoiced by the contractor, cumulative since the beginning of the contract;
 - (2) a detailed list of all services performed or supplies delivered for which the contractor has invoiced, including –
 - (i) project title, if any;
 - (ii) a description of the project;
 - (iii) an assessment of the contractor’s progress towards the completion of the requirements of the contract (i.e., not started, less than 50% completed, completed 50% or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
 - (iv) an estimate of the number of jobs created by the project, in the United States and outlying areas; and

- (v) an estimate of the number of jobs retained by the project, in the United States and outlying areas. A job cannot be reported as both created and retained.
- (3) the Government contract number.
- (4) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the contract is awarded if –
- (i) in the Contractor's preceding fiscal year, the Contractor received--
 - (A) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (ii) the public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- (5) detailed information on any first-tier subcontract over \$25,000, where the subcontractor is not an individual, awarded by the contractor, funded under the Recovery Act, to include the following:
- (i) Unique identifier (DUNS Number) for the subcontractor receiving the award and of the subcontractor's parent company, if any.
 - (ii) Name of the subcontractor.
 - (iii) Amount of the subcontract award.
 - (iv) Date of the subcontract award.
 - (v) The applicable North American Industry Classification System code.
 - (vi) Funding agency.
 - (vii) A description of the product or service to be provided under the subcontract.

- (viii) Subcontract number (the contract number assigned by the prime contractor).
- (ix) Subcontractor physical address including street address, city, state and nine-digit zip code and congressional district if in the United States.
- (x) Subcontract primary performance location including street address, city, state and nine-digit zip code and congressional district if in the United States.
- (xi) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the subcontract is awarded if –
 - (i) entity in the subcontractor's preceding fiscal year, the subcontractor received --
 - (A) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (ii) the public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986,

(Note: the information in paragraphs (i) through (x) are not required to be reported for any contractor or first-tier subcontractor whose gross income did not exceed \$300,000 in the previous tax year.)

- (6) For subcontracts under \$25,000 or any subcontracts awarded to an individual, the total number of subcontracts awarded in the quarter and their total dollar amount.

I. Audit and Records—Negotiation

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

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

- (c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—
 - (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.

- (d) Comptroller General—
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's or any subcontractors' directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

- (e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—
 - (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

- (2) The data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—
- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—
- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (2) For which cost or pricing data are required; or
 - (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

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

J. Buy American

[When using funds appropriated under the American Recovery and Reinvestment Act for construction, use clauses 52.225-XX, 52.225-, 52.225-ZZ, or 52.225-WW. Use 52.225-.XX and 52.225-YY for contracts for the construction, alteration, maintenance of a public building or public work performed in the United States under \$7,443,000 and 52.225-ZZ and 52.225-WW for contracts for the construction, alteration, maintenance of a public building or public work performed in the United States and over \$7,443,000.]

52.225-XX Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act —Construction Materials.

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

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.*

- (1) This clause implements—
 - (i) Section 1605 of the American Recovery and Reinvestment Act (Pub. L. 111-5,) by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and
 - (ii) The Buy American Act ([41 U.S.C. 10a - 10d](#)) by providing a preference for unmanufactured domestic construction material.
- (2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

- (3) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—
- (i) The cost of domestic construction material would be unreasonable.
 - (A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;¹
 - (B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.
- (c) *Request for determination of inapplicability of Section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.*
- (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—
- (A) A description of the foreign and domestic construction materials;

¹ The contracting officer would have to compare the offered price using foreign material to the price if all domestic material were used, based on the information provided by the offeror. If it does not increase the overall price by more than 25%, then it is not allowed. Offeror must then provide domestic.

- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;

- (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to section 1605 of the American Recovery and Reinvestment Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
 - (3) Unless the Government determines that an exception to section 1605 of the American Recovery and Reinvestment Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.
- (d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE
 COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site.]

52.225-YY Notice of Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act—Construction Materials.

- (a) *Definitions.* “Construction material,” “domestic construction material,” “foreign construction material,” and “steel,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods and Buy American Act—Construction Materials” (Federal Acquisition Regulation (FAR) clause [52.225-XX](#)).
- (b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-XX](#) in the request. If an offeror has not requested a determination regarding the inapplicability of 1605 of the American Recovery and Reinvestment Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.
- (c) *Evaluation of offers.*

- (1) The Government will evaluate an offer requesting exception to the requirements of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price—
 - (i) 25% of the offered price, if foreign iron, steel, or other manufactured goods used as construction material; and
 - (ii) 6% of the value of foreign unmanufactured construction material included in the offer.
 - (2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.
- (d) *Alternate offers.*
- (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR [52.225-XX](#), the offeror also may submit an alternate offer based on use of equivalent domestic construction material.
 - (2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR [52.225-XX](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
 - (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR [52.225-XX](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—
 - (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
 - (ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (DATE). As prescribed in 25.1102(e), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-XX](#).

52.225..ZZ Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act—Construction Materials under Trade Agreements.

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

“Caribbean Basin country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

- (1) This clause implements—
 - (i) Section 1605 of the American Recovery and Reinvestment Act (Pub. L. 111-5), by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States;
 - (ii) The Buy American Act ([41 U.S.C. 10a - 10d](#)) by providing a preference for unmanufactured domestic construction material other than iron and steel; and
 - (iii) The WTO GPA and Free Trade Agreements (FTAs). Therefore, the restrictions of section 1605 American Recovery and Reinvestment Act and the Buy American Act are waived for designated country construction materials.
- (2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

- (4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—
- (i) The cost of domestic construction material would be unreasonable.
 - (A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;
 - (B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.
- (c) *Request for determination of inapplicability of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.*
- (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—
- (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to section 1605 of the American Recovery and Reinvestment Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
- (3) Unless the Government determines that an exception to the section 1605 of the American Recovery and Reinvestment Act or the Buy American Act applies, use of foreign construction material other than that permitted by trade agreements is noncompliant with the applicable Act.
- (d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[Include all delivery costs to the construction site].*

(End of clause)

Alternate I (DATE). As prescribed in 25.1102(e), add the following definition of “Bahrainian or Mexican construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Bahrainian or Mexican construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements—

- (i) Section 1605 of the American Recovery and Reinvestment Act (Pub. L. 111-5), by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States;
 - (ii) The Buy American Act ([41 U.S.C. 10a - 10d](#)), by providing a preference for unmanufactured domestic construction material other than iron and steel; and
 - (iii) The WTO GPA and Free Trade Agreements (FTAs) except NAFTA and the Bahrain FTA. Therefore, the restrictions of section 1605 of the American Recovery and Reinvestment Act and the Buy American Act restrictions are waived for designated country construction materials other than Bahrainian or Mexican construction materials.
- (2) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

52.255-WW Notice of Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act—Construction Materials under Trade Agreements.

- (a) *Definitions.* “Construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause [52.225-ZZ1](#)).
- (b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the section 1605 of the American Recovery and Reinvestment Act or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-ZZ](#) in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.
- (c) *Evaluation of offers.*
- (1) The Government will evaluate an offer requesting exception to the requirements of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price—
- (i) 25% of the offered price, if foreign iron, steel, or other manufactured goods used as construction material; and
- (ii) 6% of the value of foreign unmanufactured construction material included in the offer.
- (2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.
- (d) *Alternate offers.*
- (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-ZZ](#), the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

- (2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-ZZ](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
- (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-ZZ does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—
 - (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
 - (ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (DATE). As prescribed in [25.1102\(d\)](#) (2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

- (b) *Requests for determination of inapplicability*. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-ZZ](#).

Alternate II (DATE). As prescribed in [25.1102\(e\)](#), add the definition of “Bahrainian or Mexican construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

- (d) *Alternate offers*. (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Bahrain or Mexico, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-ZZ](#), the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material other than Bahrainian or Mexican construction material.
- (2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table

prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-ZZ](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

- (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-ZZ](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material other than Bahrainian or Mexican construction material. An offer based on use of the foreign construction material for which an exception was requested—
- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
 - (ii) May be accepted if revised during negotiations.